

ORDINANCE NO. 132, SERIES 2015

AN ORDINANCE ESTABLISHING A DEVELOPMENT AREA PURSUANT TO PROVISIONS OF KRS 65.7041- 65.7083 TO BE KNOWN AS THE AXIS ON LEXINGTON 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 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.

SPONSORED BY: President David W. Tandy, Councilmember Marianne Butler

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

WHEREAS, Cityscape Residential, LLC, an Indiana limited liability company, (the "Developer") plans to undertake a major project within the Axis on Lexington Development Area (the "Development Area") to complete the Axis on Lexington Multifamily Residential Project, along with the related public infrastructure and public amenities, (the "Project"), as more particularly described in the Development Plan attached hereto as Exhibit A; and

WHEREAS, the Project when fully developed will involve new capital investment of approximately of \$46.5 million, and the Project qualifies as a development area under the Act; and

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; and

WHEREAS, the Council finds that the Project to be undertaken in the Development Area by the Developer will result in the increase in the value of property located in the Development Area, will result in increased employment within the Development Area, Louisville Metro and the region and will increase the tax base of Louisville Metro; and

WHEREAS, it is therefore in the interest of 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; and

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

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; and

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

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.

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/ JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

Section 1. The Development Plan, attached hereto as Exhibit A, is hereby adopted.

Section 2. 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 8.87 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 has established several other development areas with a combined taxable real property assessment at the time they were established of approximately \$1.474 billion. The taxable real property assessment of the Development Area for calendar year 2014 is approximately \$300,000, and that amount combined with the previous development areas established by Louisville totals \$1.475 billion, while the total taxable real property assessment for Louisville exceeds \$51 billion, 20% of which is \$12 billion.

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

1. **A substantial loss of residential, commercial, and industrial activity or use has occurred within the Development Area.** The Development Area includes buildings that were previously used by rail car processing facilities and other quasi-industrial uses. The largest building is vacant, having been abandoned by its tenant and has been an eyesore in the neighborhood. Adjacent to this property exist other underutilized buildings and properties that have had limited investment in recent years with large areas completely closed off and essentially abandoned. There have been previous attempts to redevelop this property which have been unsuccessful for a variety of reasons.
2. **More than fifty percent (50%) of the residential, commercial, or industrial structures are deteriorating or deteriorated.** The census data for the site including and surrounding this Development Area demonstrate a trend of deteriorating and abandoned properties, diminishing home ownership and a reduction in commercial development over the last several decades. The structures remaining in the Development Area include vacant, dilapidated, and abandoned buildings. The structures constituting more than fifty percent (50%) of the structures within the Development Area are deteriorating or deteriorated.
3. **There are inadequate improvements or substantial deterioration of public infrastructure to support the proposed new development within the Development Area.** In order to develop the proposed Project, substantial site work and a parking structure are required to deal with extreme site conditions and to support the anticipated increased demand. Additional power, sewer and water

infrastructure is required to facilitate the Project, and these improvements will facilitate further development within this area. These infrastructure improvements cannot be reasonably funded with private investment alone. In addition to project specific infrastructure, the public infrastructure is completely inadequate and dilapidated with crumbling sidewalks and curbs, no accessible routes, and deteriorating pavement. Restoration of this streetscape frontage including sidewalks, landscaping, additional ROW grant, a new accessible TARC stop and paving will be accomplished by this project.

4. **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 extreme cost of providing substantial site work, the necessary parking and related utility infrastructure to facilitate the proposed development along with mitigation and management of brownfield conditions, and structural costs of properly developing in the floodplain. Potential revenue alone cannot underwrite the costs of the proposed infrastructure improvements. Without the site work and additional parking, the continued development of the area will become impeded, and the residential space proposed to be included in the Project will not be feasible. No other adequate funding mechanism affords the site work and utility infrastructure improvements absent the incentives provided under the Act. These improvements cannot be facilitated with private investment alone. The aesthetic improvement resulting from the development of the proposed Project will have a positive effect on the city and surrounding area and likely have a significant multiplier effect on overall property tax revenue generation in the city.
- F. The Development Area will not reasonably be developed without public assistance, including incentives as provided by the Act. The high cost of parking, public infrastructure, and site development expenses, estimated to be in excess of \$7,740,000 or approximately 17% of the total Project's cost, 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 by the enhancements to parking and utilities, and bring additional residents and visitors to Louisville. The Development Area has a 2014 taxable assessment of approximately \$300,000 and annually generates \$3,972 in real estate taxes to Louisville. The Project will increase capital investment by approximately \$46.5 million, which will provide significant new taxes to Louisville and the other taxing districts. Based on a financial report attached hereto as Exhibit A, the direct impact of the Project will increase employment within the Development Area by more than 428 total jobs, and generate new Louisville Metro and State taxes over the twenty-five (25) year life of the Development Area, by more than \$18,623,322. Therefore, even when considering the requested incentives for the Project from Louisville, the Project will be financially beneficial to Louisville. The Project will also be a catalyst for additional development in the area surrounding the Development Area.
- H. The area immediately surrounding the Development Area has not been subject to growth and development through investment by private enterprise. The proposed improvements within the Development Area will have a positive effect on the surrounding area, which faces stagnation in development without them. The proposed site work, additional parking and utility services will increase the feasibility of developments within the area, not only within this Development Area, but also the surrounding area. The area surrounding the Development Area is at a turning point. There remains a distinct lack of residential rental units, retail uses, parking, and utility infrastructure to support continued development. In the surrounding area, structures are being left vacant and abandoned, and they now offer potential for re-development. There is the potential for attractive and desirable new multi-family housing within the surrounding area. This Project, at this time, is a catalyst project that can excite and create the momentum needed to completely transform this area over the coming years.
- I. The pledge and use of a portion of Louisville's incremental revenues derived from the Development Area to provide redevelopment assistance to the Project and the Development Area will increase capital investment and employment in Louisville, and therefore constitutes a public purpose.

Section 3. 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

Axis on Lexington Development Area and 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 4. 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 5. 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 real estate 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 6. 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;
- D. An accounting of the Approved Project Costs and other Project Costs incurred by the Developer.

Section 7. 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 100% of the local, Louisville Metro Ad Valorem Real Property Tax Increment in excess of the taxes otherwise due on the first \$5,000,000 of the valuation of the Project, 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 \$4,867,144 as set forth in the Local Participation Agreement.

Section 8. 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 9. That the Mayor and other appropriate Louisville 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 10. 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 11. This Ordinance shall take effect upon its passage and approval.

Signatures follow on the next page.

This Ordinance was given first reading at a duly convened meeting of the Metro Council held on July, 30th, 2015, and given second reading and adopted at a duly convened meeting of the Metro Council held on August, 13th, 2015.

Stephen Ott PRO - TEM
H. Stephen Ott
Metro Council Clerk

David W. Tandy
David W. Tandy
President of the Council

Greg Fischer
Greg Fischer
Mayor

8/17/15
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: Michael J. O'Connell

LOUISVILLE METRO COUNCIL
READ AND PASSED
August 13, 2015

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the Louisville/Jefferson County Metro Council (the "Metro Council"), and as such Clerk I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly adopted by the Metro Council upon second reading at a duly convened meeting held on AUGUST 13, 2015, signed by the Mayor, approved by me as Clerk and in full force and effect as therein stated, all as shown by the official records of the Metro Council in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand as Metro Council Clerk of the Louisville/Jefferson County Metro Government and the seal of the Metro Government this 21 day of AUGUST, 2015.



H. Stephen Ott, Metro Council Clerk

Exhibits

- A. Development Plan
- B. Map of Development Area
- C. Local Participation Agreement

Development Plan

For

Axis on Lexington

Louisville/Jefferson County Metro Government

July 2015

**Development Plan
Axis on Lexington Development Area**

1. Introduction.

1.1. Purpose. The Louisville/Jefferson County Metro Government (“Louisville”) intends to establish the **Axis on Lexington 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 development of a new project consisting of a multifamily residential use, being undertaken by Cityscape Residential, LLC, an Indiana limited liability company (the “Developer”), to be located at and adjacent to 1373 Lexington Road, Louisville, Kentucky. The Developer proposes to construct a new 300± Unit Multifamily Residential Community and a new space Parking Structure along with other major infrastructure improvements relating to foundation, environmental, utilities, and streetscape improvements (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.

This Project will provide unique support to the east of Downtown connector neighborhood along Lexington Road. The new Multifamily Residential Community will serve as a residential anchor for the Lexington Road gateway to the Highlands and the Central Business District. Interior features at Axis will be “condo-quality,” including stainless steel appliances, wood-look plank flooring throughout living spaces, quartz and granite countertops in kitchens and bathrooms, front load washers and dryers, 9’ ceilings throughout, garden soaking tubs, walk-in showers, and various

other luxury lighting, plumbing and trim details. The common amenities will be evocative of a high-end resort, including a salt water pool, private courtyards with grills and firepits at each building, a clubhouse with coffee bar, a business center, game and media rooms, a commercial quality fitness room, and a pet spa along with a pet park and bicycle maintenance facility. Axis will be professionally managed to provide the highest level of service for our residents. It will provide a unique urban living environment targeting young, well-educated millennials. This group is highly sought by employers and providing attractive urban living opportunities for them is an important key in attracting them to cities. The Project will also appeal to those of other generations specifically seeking an urban and active, maintenance-free lifestyle.

Areas with a concentration of urban residents become true communities and attract the development of restaurant, shopping and entertainment venues. This Project will support the City's goal of bringing high quality residential opportunities near urban Louisville. By providing an attractive, exciting place to live, the Project will reinforce the ability of private and public employers to recruit young professional and creative people to Louisville in general and to Louisville's Central Business District in particular. Many of Louisville's peer cities are experiencing substantial growth in downtown housing and employment as a result of the creation of urban living spaces. Memphis, Nashville, Indianapolis, Charlotte, and Raleigh all serve as examples of this evolution. Downtown Louisville has the employment base and a growing restaurant and retail base to support urban living. Currently missing is a critical mass of urban living spaces, particularly upscale rental communities. This Project will serve as a catalyst for more urban residential development.

Young millennials are particularly attracted to living environments that are well connected to active walkable amenities. Not only will the Project provide a connection to existing shops and restaurants in the Highlands and Downtown, but it will serve as the catalyst for expansion of retail uses along the Lexington Road corridor.

A sense of community within their living environment is one of the prime characteristics desired by urban residents. The Project is being designed with multiple indoor and outdoor gathering spaces to facilitate building this sense of community. The Project will reinforce the design intent by providing regular planned opportunities for residents to come together, both in-house as well as gatherings in nearby restaurant and entertainment venues.

1.2 Size and Location. The Development Area, identified more specifically on the map attached as Exhibit "A," is an approximate 8.87 acre area in downtown Louisville. This location, on the edge of the Highlands neighborhood and bordering the I-64 expressway, is perfectly situated for development of the Project, which will become the anchor and catalyst for continued high quality growth and development along Lexington Road. Several parcels in this area are ripe for development.

2. The Development Area

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

(a) The Development Area is a contiguous area consisting of approximately 8.87 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 (as those terms are defined in the Act) to exceed twenty percent (20%) of the total assessed taxable value of real property within Louisville. To date, Louisville has established several other development areas with a combined taxable real property assessment of \$1.474 billion. The taxable real property within the Development Area for calendar year 2014 is approximately \$300,000, and that combined with the other development areas that have been established by Louisville totals approximately \$1.475 billion in taxable real property assessment. The total assessed value of taxable real property within Louisville for the calendar year 2013 exceeds \$51 billion, 20% of which is \$12 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; 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.

3. Louisville has reviewed and analyzed the conditions within the Development Area and finds that the Development Area exhibits at least four (4) of the seven (7) qualifying characteristics as follows:

3.1. A substantial loss of residential, commercial, and industrial activity or use has occurred within the Development Area. The Development Area includes buildings that were previously used by rail car processing facilities and other quasi-industrial uses. The largest building is vacant, having been abandoned by its tenant and has been an eyesore to the neighborhood. Adjacent to this property exist other underutilized buildings and properties that have had limited investment in recent years with large areas completely closed off and essentially abandoned. There have been previous attempts to redevelop this property which have been unsuccessful for a variety of reasons.

3.2. More than fifty percent (50%) of the residential, commercial, or industrial structures are deteriorating or deteriorated. The census data for the site including and surrounding this Development Area demonstrate a trend of deteriorating and abandoned properties, diminishing home ownership and a reduction in commercial development over the last several decades. The structures remaining in the Development Area include vacant, dilapidated, and abandoned buildings. The structures constituting more than fifty percent (50%) of the structures within the Development Area are deteriorating or deteriorated.

3.3. Inadequate public improvements or substantial deterioration in public infrastructure. There are inadequate improvements or substantial deterioration of public infrastructure to support the proposed new development within the Development Area. In order to develop the proposed Project, a parking structure is required to support the anticipated increased demand. Additional power, sewer and water infrastructure is required to facilitate the Project, and these improvements will facilitate further development within this area. These infrastructure improvements cannot be reasonably funded with private investment alone. In addition to project specific infrastructure, the public infrastructure is completely inadequate and dilapidated with crumbling sidewalks and curbs, no accessible routes, and deteriorating pavement. Restoration of this streetscape frontage, which includes sidewalks, landscaping, additional ROW grant, a new accessible TARC stop and paving, will be accomplished by this project.

3.4. 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 extreme cost of providing adequate parking and related utility infrastructure to facilitate the proposed development, the cost of mitigating and managing brownfield conditions, and the structural costs of properly developing in the floodplain. Potential revenue alone cannot underwrite the costs of the proposed infrastructure improvements. Without additional parking, the continued development of the area will become impeded, and the residential space proposed to

be included in the Project will be feasible. No other adequate funding mechanism affords utility infrastructure improvements absent the incentives provided under the Act. These improvements cannot be facilitated with private investment alone. The aesthetic improvement resulting from the development of the proposed Project will have a positive effect on the city and surrounding area. Additionally, the Project will likely have a significant multiplier effect on overall property tax revenue generation in the city.

3.5. Assurances the Development Area Is Not Reasonably Expected to Develop Without Public Assistance. Louisville finds that the Development Area will not reasonably be developed without public assistance, including incentives as provided by the Act. The high cost of parking, public infrastructure and site development expenses, estimated to be in excess of \$8,000,000 or approximately 17% of the total Project's cost, needed for the Project, when compared with low potential revenue generated by these improvements, make public incentives critical to the financing of the Project.

3.6. Assurances the Public Benefits of Redeveloping the Development Area as Proposed Justify the Public Costs Proposed. Louisville 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, facilitate secondary and tertiary re-development within the area by the enhancements to parking and utilities, and bring additional residents and other visitors to Louisville. The Development Area has a 2014 taxable assessment of approximately \$300,000 and annually generates \$3,972 in real estate taxes to Louisville. The Project will increase capital investment by

approximately \$46.5 million, which will provide significant new taxes to Louisville and the other taxing districts. Based on a financial report, attached hereto as Exhibit "B", the direct impact of the Project will increase employment within the Development Area by more than 428 total jobs and generate new Louisville taxes over the twenty-five (25) year life of the Development Area by more than \$18,623,322 (in addition to state taxes). Therefore, even when considering the requested incentives for the Project from Louisville, the Project will be financially beneficial to Louisville. Further, the Project will serve as a catalyst for additional development in the area surrounding the Development Area.

3.7. 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. These special circumstances include the restricted economic feasibility for development of structured parking and utility infrastructure within the Development Area. The proposed improvements within the Development Area will have a positive effect on the surrounding area, which faces stagnation in development without them. Additional parking and utility services will increase the feasibility of developments within the area, not only within this Development Area, but also the development of the surrounding area.

The area surrounding the Development Area is at a turning point. There remains a distinct lack of residential rental units, parking, and streetscape and utility infrastructure to support continued development. In the surrounding area, antiquated manufacturing facilities are being abandoned and they now offer potential for re-development. There is the potential for attractive and desirable new multi-family housing and commercial development within the surrounding area. This Project, at this time, is a catalyst project that can excite and create the momentum needed to completely transform this area over the coming years. These investments, and others, by public institutions in the surrounding area will be positively affected by the investment in this Development Area.

3.8. 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."

3.9. Existing Uses and Conditions. The Development Area consists of approximately 8.87 acres located at 1373 Lexington Road. The existing site includes a number of since abandoned older metal buildings used primarily for industrial and distribution uses.

3.10. Changes in the Zoning Ordinance, Zoning Map, Comprehensive Plan or Other Codes or Plans Necessary to Implement the Development Plan. The site is currently zoned R8A. No change is needed in zoning to implement the Development Plan.

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

4. The Development Program.

This Development is designed to appeal to young professionals and creative types of the millennial generation; it will provide an attractive living environment for this group of individuals who are so highly sought after by employers and create the necessary and critical support for a vibrant urban life. Additionally, it will appeal to affluent empty nesters and others who specifically seek the maintenance-free, full service lifestyle offered by a high quality urban living environment.

5. Redevelopment Assistance and Finance Plan.

Louisville proposes to provide redevelopment assistance and pay for Project costs through a pledge of a portion of the incremental increases in tax revenues from real property taxes from the Development Area. Louisville proposes to pay annually to the Agency, the Released Amount which shall be calculated as provided in the Local Participation Agreement, not to exceed a sum equal to 100% of the local, Louisville Metro Ad Valorem Real Property Tax Increment in excess of the taxes otherwise due on the first \$5,000,000 of the valuation of the Project, 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 \$4,867,144 as set forth in the Local Participation Agreement.

Louisville 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"), a nonstock, nonprofit corporation organized pursuant to KRS Chapters 58 and 273, as the entity in charge of overseeing, administering and implementing the terms of the development ordinance.

6. Conclusions.

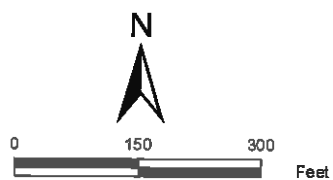
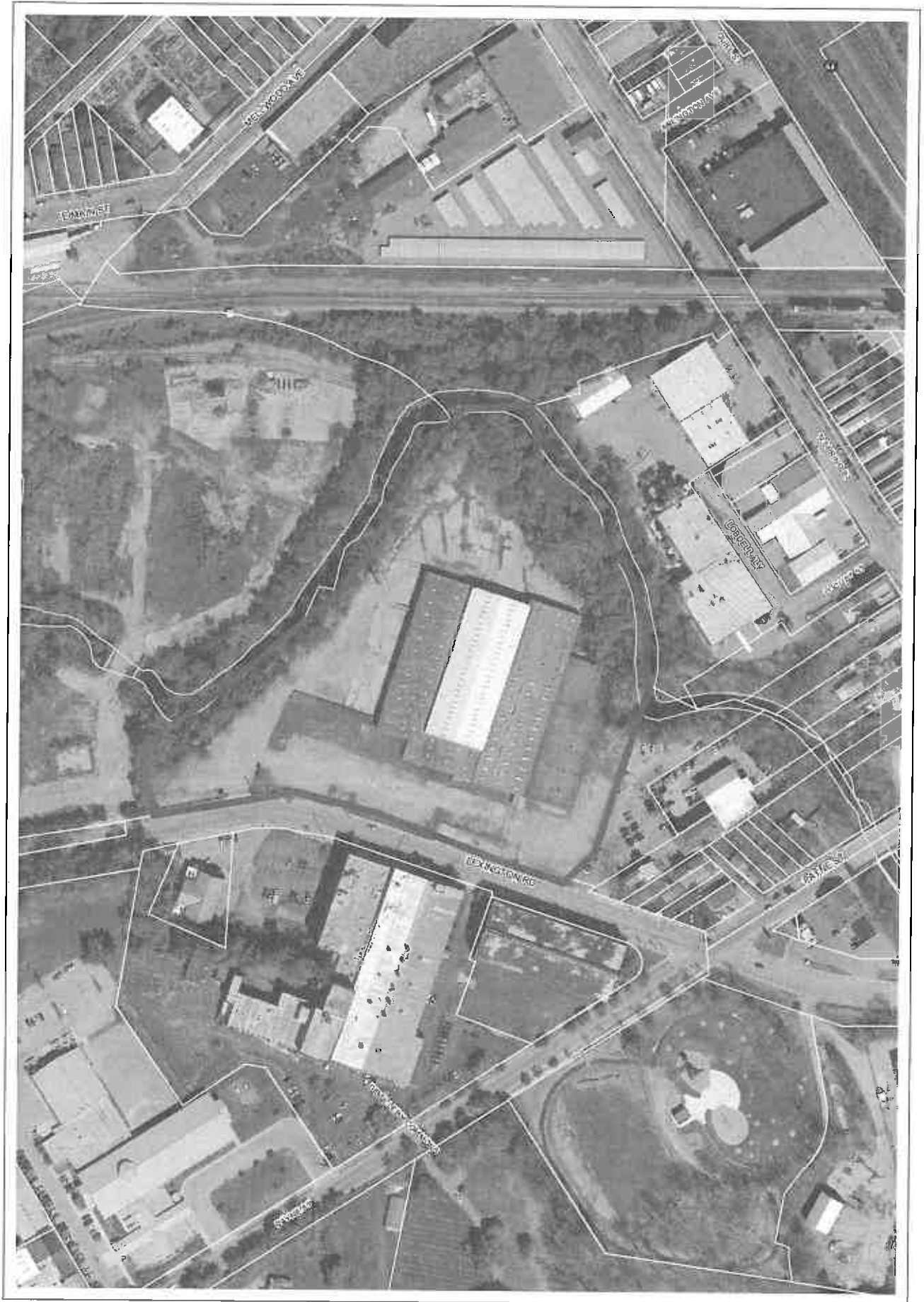
In conclusion, the Project will serve as an important catalyst to the development of the area along Lexington Road, will generate significant new tax revenues for Metro Louisville, and will facilitate an increase in the availability of high quality urban living opportunities needed to support the growth and development of Louisville. The incentives proposed to be provided under the Act are reasonable and critical to the overall financing for the Project.

List of Exhibits

Exhibit A - Map and Description of Development Area


Exhibit B – Financial Forecast from Cityscape Residential, LLC

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Proposed Lexington Road TIF
Aerial Imagery: Spring, 2012

-  Lexington Road TIF
-  Parcels
-  Beargrass Creek



LOJIC
LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT, and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA)
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**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
LOCAL PARTICIPATION AGREEMENT
FOR THE
AXIS ON LEXINGTON PROJECT
WITHIN THE
AXIS ON LEXINGTON DEVELOPMENT AREA**

LOCAL PARTICIPATION AGREEMENT

This **LOCAL PARTICIPATION AGREEMENT** (the "Agreement") effective as of the ____ day of _____, 2015, 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 corporation ("Authority").

RECITALS:

WHEREAS, Cityscape Residential, LLC, an Indiana limited liability company, ("Developer"), desires to develop a multi-family residential project located at and adjacent to 1373 Lexington Road in Louisville, consisting of 300 rental residential apartments to cost approximately \$40 million, known as the **AXIS** on Lexington Project more specifically described in Exhibit A (the "Project"); and

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

WHEREAS, pursuant to KRS 65.7041-65.7083 ("the Act"), the Metro Council of Louisville pursuant to the provisions of the Act, by Ordinance No _____ Series 2015 (the "Ordinance"), has established the **AXIS** on Lexington Development Area (the "Development Area"); and

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

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 enhance housing opportunities for Louisville residents; and

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; and

WHEREAS, Louisville is authorized under the Act to execute 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; and

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 taxes as provided in the Act;

WHEREAS, the Authority is organized and incorporated by Louisville as a not-for-profit 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 District; 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; and

NOW THEREFORE, Louisville and the Authority agree that in consideration of the premises and the additional consideration provided herein, the parties 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 January 1, 2017, being within two (2) years of the Commencement Date which, upon the written request of the Authority to Louisville, may be extended, but in no event more than four (4) years from the Commencement Date.

(b) **"Base Year"** means January 1, 2014 through December 31, 2014, 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 real estate 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 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, and (iii) such subsidiary or related entity is reasonably acceptable to Louisville.

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 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 \$4,867,144.00.

3.4 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 certification prepared by an independent certified public accounting firm of 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.

3.5 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 3.4 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.

3.6 Time of Payment. By no sooner than (i) August 1st 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

3.7 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 assumed to be **FIVE MILLION DOLLARS (\$5,000,000.00)**. The applicable real property ad valorem tax rate in the Base Year, including the Urban Services District tax and the county tax rate was .4921 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 \$24,605.

4.2 New Real Estate Tax Revenue. The Office of Management and Budget shall calculate the amount of New Real Estate Revenue each year after the Activation Date, prior to the Time of Payment pursuant to Section 3.6 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 B.

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 3.6 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 3.6 of this Agreement, shall calculate the Released Amount, which shall be a sum equal to one hundred percent (100%) 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
Department of Economic Growth and Innovation
444 S. 5th St., Ste. 600

Louisville, Kentucky 40202
Attn: Mary Ellen Wiederwohl

If to the Authority: Metro Development Authority, Inc.
444 S. 5th 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.

[Remainder of Page Intentionally Left Blank]

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.

**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: _____
Mary Ellen Wiederwohl, President