Development Plan

For

Fourth and Guthrie

Louisville/Jefferson County Metro Government

__________, 2016

Development Plan
The Fourth and Guthrie Development Area

1. Introduction.

1.1. Purpose. The Louisville/Jefferson County Metro Government ("Louisville Metro") intends to establish the **Fourth and Guthrie Development Area** (the "Development Area") pursuant to KRS Sections 65.7041 to 65.7083, as the same may be amended (collectively, the "Act"), to encourage the mixed-use redevelopment project undertaken by Power Encore, LLC, a Kentucky limited liability company (the "Developer"), to be located at and adjacent to 535-539 S. Fourth Street and 321 W. Chestnut Street, Louisville, Kentucky. The Developer proposes to redevelop the site of a former office building into a 232+/- unit multifamily residential community with over 10,000 square feet of street level restaurant and retail space, while improving an existing parking garage (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 provide an updated urban housing option for Louisville Metro, catering to professionals and families desiring an urban lifestyle, as well as baby boomers and "empty-nesters" seeking an urban retirement experience that allows opportunities and ease of access to arts and cultural attractions downtown.

1.3. The redevelopment plan for the Project is to redevelop the site of a former office space which has sat vacant since 2015 into a mixed-use project containing both residential units and restaurant and retail space. The Project will include many common-area, high-quality amenity offerings, and will be professionally managed to provide the highest level of service for its residents. The Project will also improve an existing underutilized and under-maintained parking garage that is next to the former office building.

Redevelopment will transform an underutilized block in a significant retail corridor of Downtown Louisville, and will serve as a catalyst for further development of the surrounding area. In addition to contributing to and supporting Louisville Metro's explicit goal of bringing high-quality residential opportunities to the Downtown Louisville area, this proposed project will strengthen the basis for groceries and other urban services, and will drive and support further development on South Fourth Street.

Areas with a concentration of urban residents become true communities, and serve as a draw for the development of restaurant, shopping and entertainment venues. 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 Metro in general. Many of Louisville Metro'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.

"Empty nesters" and young millennials are particularly attracted to living environments that are well connected to active walkable amenities, particularly urban streets with restaurant, entertainment and shopping opportunities. Not only will the Project provide a connection to existing shops and restaurants on South Fourth Street, but it will serve as the catalyst for expansion of other uses in the Downtown area.

1.4 Size and Location. The Development Area is an approximate 1.9456 acre area in Downtown Louisville identified more specifically on the map attached as Exhibit "A". This location, in Downtown Louisville, 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 1.9456 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 $1.494 billion. The taxable real property within the Development Area for calendar year 2015 is approximately $10,012,280, and that combined with the other development areas that have been established by Louisville Metro totals approximately $1.504 billion in taxable real property assessment. The total assessed value of taxable real property within Louisville Metro for the calendar year 2015 exceeds $53 billion, 20% of which is $10.6 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 more than 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

Development Area is the site of a former office building that has sat vacant since late 2015, when the former owner moved its employees to another location. In addition, the parking garage that is part of the project has vacant retail space on the ground floor and has not been maintained.

2. **Inadequate public improvements or substantial deterioration in public infrastructure.** The parking garage in the Development Area has been underutilized and under-maintained. In addition, some of the existing utilities need to be relocated, while a vault needs to be constructed for stormwater detention and drainage.

3. **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 large scale costs associated with the redevelopment of the proposed Project. 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 improvement resulting from the development of the proposed Project will have a positive effect on Louisville Metro and

surrounding area, especially the impact on South Fourth Street.

2.3. 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.

2.4. 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 residents, diners and other visitors to Louisville. The Development Area has a 2015 taxable assessment of approximately $10,012,280, but currently generates $0 in ad valorem real property taxes to Louisville because its owner qualified for the property tax exemption pursuant to Section 170 of the Kentucky Constitution. The Project will increase capital investment by approximately $35,000,000, 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 $3,442,448, to provide redevelopment assistance to the project, it will retain 20% of the new incremental increase in 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. The property is currently generating no revenue to Louisville Metro, and has not for several years. 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.

2.5. **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. The majority of the property in the Development Area has sat vacant since 2015. The proposed improvements within the Development Area will have a positive effect on the surrounding area, which faces stagnation in development without them. Increased residential density 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 immediately surrounding the Development Area has not been subject to growth and development through investment by private enterprise independent of public support. The proposed improvements within the Development Area will have a positive effect on the surrounding area, which faces stagnation in development without them. 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.

2.6. 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."

2.7. Existing Uses and Conditions. The Development Area consists of approximately 1.9456 acres located at 535-539 South Fourth Street and 321 West Chestnut Street in Downtown Louisville. The existing site includes a former office building that has been vacant since 2015 and is proposed to be demolished.

2.8. 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.

2.9. 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.

Designed to appeal to young professionals and creative types of the millennial generation, this Development 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 middle class empty nesters and others who specifically seek the lifestyle offered by a high quality urban living environment.

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: (i) for the first ten (10) years of the term of the Local Participation Agreement, 100% of the Louisville Metro Ad Valorem Real Property Tax Increment, as that term is defined in the Local Participation Agreement, and (ii) for the next ten (10) years of the term of the Local Participation Agreement, 65% of the Local Metro Louisville Ad Valorem Real Property Tax Increment (which averages 80% over the term of 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 $3,442,488 as 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 Metro 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 Downtown Louisville, will generate significant new tax revenues to Louisville Metro, and will facilitate an increase in the availability of high quality urban living opportunities 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

321 W. Chestnut Street

Beginning at a point in the East line of Fourth Street, 644 feet South of the South line of Muhammad Ali Boulevard (formerly Walnut Street); thence East and parallel with said South line of Muhammad Ali Boulevard, 250 feet; thence Southwardly, parallel with the East line of Fourth Street, 100 feet, more or less, to the North line of Chestnut Street; thence West 250 feet with the North line of Chestnut Street, to the East line of Fourth Street; thence North with the East line of Fourth Street, 100 feet, more or less, to the beginning.

535 S. 4th Street

Beginning at a point in the East line of Fourth Street distant Southwardly from the intersection of the East line of Fourth Street with the South line of Muhammad Ali Boulevard (formerly Walnut Street), 405 feet measured along the East line of Fourth Street; running thence Eastwardly and parallel with the South line of Muhammad Ali Boulevard, 250 feet to a point; running thence Westwardly and parallel with the South line of Muhammad Ali Boulevard, 250 feet to the East line of Fourth Street; running thence Northwardly along the East line of Fourth Street, 100 feet to the point of place of beginning.

539 S. 4th Street

Beginning at a point in the East line of Fourth Street distant South from the intersection of the East line of Fourth Street with the South line of Muhammad Ali Boulevard (formerly Walnut Street) 505 feet, measured along the East line of Fourth Street; running thence East and parallel with the South line of Muhammad Ali Boulevard, 250 feet to a point; running thence South and parallel with the East line of Fourth Street, 139 feet to a point; running thence West and parallel with the South line of Muhammad Ali Boulevard, 250 feet to the East line of Fourth Street; running thence North along the East line of Fourth Street; running thence North along the East line of Fourth Street, 139 feet to the point or place of beginning.

Being the same property conveyed to Power Encore, LLC, a Kentucky limited liability company by special warranty deed dated September 23, 2016, and of record in Deed Book 10717, Page 841 in the office of the clerk of Jefferson County, Kentucky.

EXHIBIT B

ESTIMATE OF NEW REAL ESTATE TAX REVENUE

2017	167,720
2018	171,913
2019	176,211
2020	180,616
2021	185,131
2022	189,760
2023	194,504
2024	199,366
2025	204,351
2026	209,459
2027	214,696
2028	220,063
2029	225,565
2030	231,204
2031	236,984
2032	242,909
2033	248,981
2034	255,206
2035	261,586
2036	268,126

EXHIBIT B

MAP OF DEVELOPMENT AREA

LEGAL DESCRIPTION

321 W. Chestnut Street

Beginning at a point in the East line of Fourth Street, 644 feet South of the South line of Muhammad Ali Boulevard (formerly Walnut Street); thence East and parallel with said South line of Muhammad Ali Boulevard, 250 feet; thence Southwardly, parallel with the East line of Fourth Street, 100 feet, more or less, to the North line of Chestnut Street; thence West 250 feet with the North line of Chestnut Street, to the East line of Fourth Street; thence North with the East line of Fourth Street, 100 feet, more or less, to the beginning.

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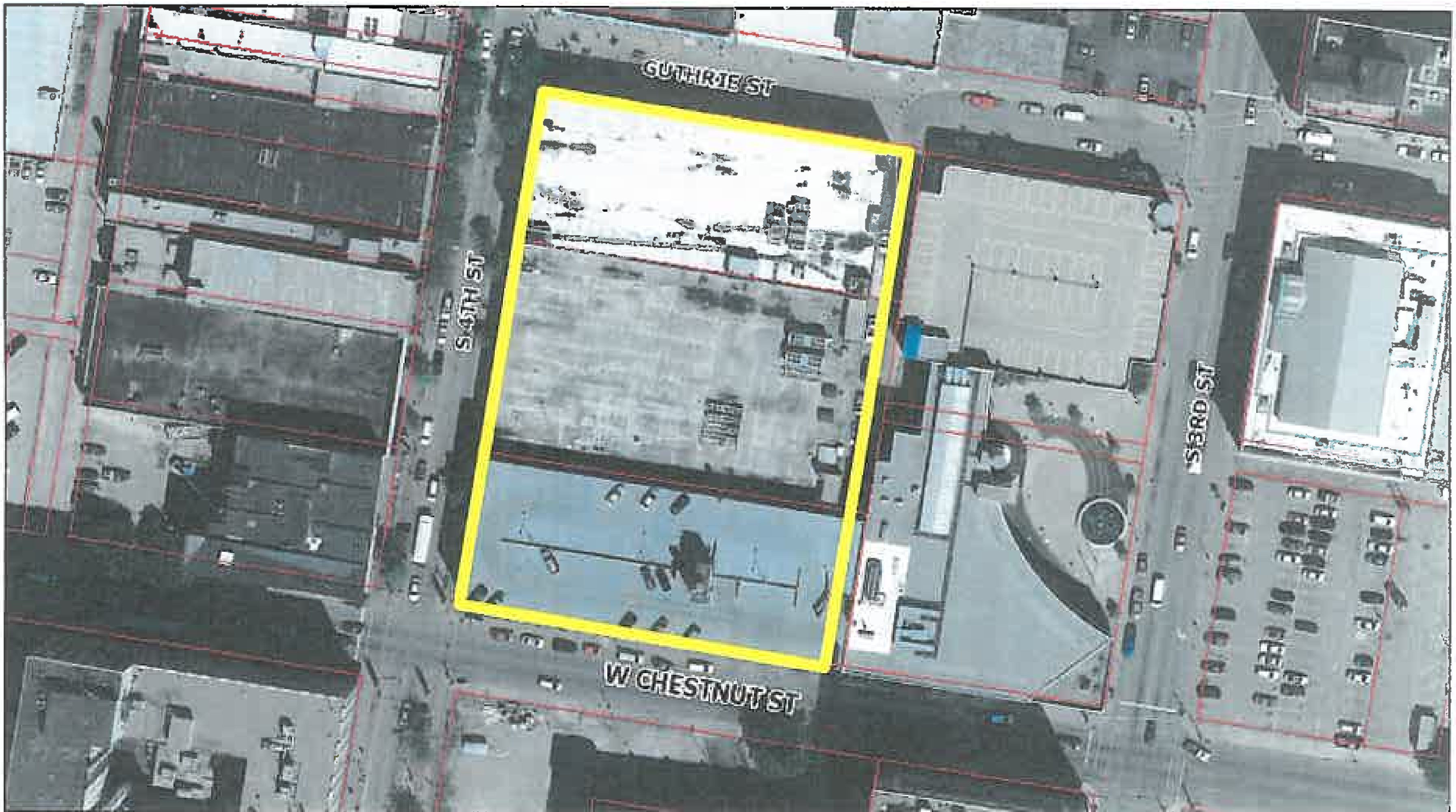

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EXHIBIT C

LOCAL PARTICIPATION AGREEMENT

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

LOCAL PARTICIPATION AGREEMENT

FOR THE

FOURTH AND GUTHRIE PROJECT

WITHIN THE

FOURTH AND GUTHRIE DEVELOPMENT AREA

LOCAL PARTICIPATION AGREEMENT

This **LOCAL PARTICIPATION AGREEMENT** (the "Agreement") effective as of the ____ day of ________, 2016, 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, Power Encore, LLC, a Kentucky limited liability company, ("Developer"), desires to develop in downtown Louisville a mixed-use project, consisting of approximately 232 rental residential apartments and over 10,000 square feet of street level restaurant and garage space and improvements to an existing and adjacent garage, to cost approximately $30.0 million, known as the Fourth and Guthrie 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 the Developer as set forth in this Agreement and the TIF Disbursement Agreement to be entered into among the 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 2016 (the "Ordinance"), enacted on _________, 2016, has established the Fourth and Guthrie 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, increase employment in and enhance housing opportunities for Louisville residents;

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;

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:

The above recitals are true and correct and are incorporated herein, in their entirety, by this reference.

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 November 15, 2018, 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, 2015 through December 31, 2015, 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 $3,442,488.

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 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) A certification submitted by the Developer evidencing that the 21 units (11 one bedroom units and 10 two bedroom units) were rented out at rates that (i) for the leases that began in the preceding Calendar Year, did not exceed the applicable 80% AMI Cap for that year for that type of unit, and (ii) for leases that began in the year prior to the preceding Calendar Year, did not exceed the applicable 80% AMI Cap for that year. As used herein, the 80% AMI Cap means that the contract rent amount for the unit (in this case, the contract rent will include utilities), cannot exceed the 80% gross rent limit for a one bedroom unit or two bedroom unit, as applicable, for the Louisville, KY-IN HUD Metro FMR Area.

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

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

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

(f) 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 31st 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 previous owner, as a qualifying organization, was granted exemption from property taxes pursuant to Section 170 of the Kentucky Constitution. Therefore, the real property in the Development Area in the Base Year generated no revenue. As such, the Old Real Estate Tax Revenue amount is stipulated as $0.

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: (i) for the first ten (10) years of this Agreement, one hundred percent (100%) of the Real Estate Tax Increment, and (ii) for the next ten (10) years of this Agreement, sixty-five percent (65%) of the Real Estate Tax Increment.

Section 5. <u>Pledge of Incremental Revenues Superior to Ordinances and Statutes</u>.

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.

<u>Section 6.</u> <u>Miscellaneous</u>.

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

<u>Section 7.</u> <u>Default</u>.

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.

<u>Section 8.</u> <u>Miscellaneous Provisions</u>.

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.

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

EXHIBIT A

PROJECT DESCRIPTION

The Fourth and Guthrie project will involve new capital investment of approximately $30 million and be a mixed-use project with approximately 232 residential apartments with over 10,000 square feet of street level restaurant and retail space, with utility and public infrastructure improvements, including improvements to an adjacent parking structure.

EXHIBIT B

LEGAL DESCRIPTION OF DEVELOPMENT AREA

321 W. Chestnut Street

Beginning at a point in the East line of Fourth Street, 644 feet South of the South line of Muhammad Ali Boulevard (formerly Walnut Street); thence East and parallel with said South line of Muhammad Ali Boulevard, 250 feet; thence Southwardly, parallel with the East line of Fourth Street, 100 feet, more or less, to the North line of Chestnut Street; thence West 250 feet with the North line of Chestnut Street, to the East line of Fourth Street; thence North with the East line of Fourth Street, 100 feet, more or less, to the beginning.

535 S. 4th Street

Beginning at a point in the East line of Fourth Street distant Southwardly from the intersection of the East line of Fourth Street with the South line of Muhammad Ali Boulevard (formerly Walnut Street), 405 feet measured along the East line of Fourth Street; running thence Eastwardly and parallel with the South line of Muhammad Ali Boulevard, 250 feet to a point; running thence Westwardly and parallel with the South line of Muhammad Ali Boulevard, 250 feet to the East line of Fourth Street; running thence Northwardly along the East line of Fourth Street, 100 feet to the point of place of beginning.

539 S. 4th Street

Beginning at a point in the East line of Fourth Street distant South from the intersection of the East line of Fourth Street with the South line of Muhammad Ali Boulevard (formerly Walnut Street) 505 feet, measured along the East line of Fourth Street; running thence East and parallel with the South line of Muhammad Ali Boulevard, 250 feet to a point; running thence South and parallel with the East line of Fourth Street, 139 feet to a point; running thence West and parallel with the South line of Muhammad Ali Boulevard, 250 feet to the East line of Fourth Street; running thence North along the East line of Fourth Street; running thence North along the East line of Fourth Street, 139 feet to the point or place of beginning.

Being the same property conveyed to Power Encore, LLC, a Kentucky limited liability company by special warranty deed dated September 23, 2016, and of record in Deed Book 10717, Page 841 in the office of the clerk of Jefferson County, Kentucky.

EXHIBIT C

ESTIMATE OF NEW REAL ESTATE TAX REVENUE

2017	167,720
2018	171,913
2019	176,211
2020	180,616
2021	185,131
2022	189,760
2023	194,504
2024	199,366
2025	204,351
2026	209,459
2027	214,696
2028	220,063
2029	225,565
2030	231,204
2031	236,984
2032	242,909
2033	248,981
2034	255,206
2035	261,586
2036	268,126