

ORDINANCE NO. 182, SERIES 2018

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

**SPONSORED BY: PRESIDENT JAMES**

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

**WHEREAS**, Middleburg Real Estate Partners, LLC, a Virginia limited liability company, or an affiliate of same (the "Developer") plans to undertake a major project within the Vesta Derby Oaks Development Area (the "Development Area") to complete the Vesta Derby Oaks Redevelopment Project (the "Project"), as more particularly described in the Development Plan attached hereto as Exhibit A;

**WHEREAS**, the Project, which qualifies as a development area under the Act, will involve new capital investment of approximately \$29.3 million when fully developed;

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

seek public comment on the Development Plan;

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

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

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

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

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

**WHEREAS**, Louisville Metro has determined that based on the benefits to be

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

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

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

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

- A. All statements of fact set forth in the recitals to this Ordinance are found true and correct and are incorporated herein by reference.
- B. The Development Area, as depicted in Exhibit B, is a contiguous parcel of property, approximately 24.0573 acres in size, and is less than three (3) square miles in area as required by the Act.
- C. The Development Area constitutes previously developed land as required by KRS 65.7043(2).
- D. The establishment of the Development Area shall not cause the assessed value of taxable real estate in all development areas located in Louisville Metro to exceed 20% of the assessed value of all taxable real property in Louisville. To date Louisville Metro has established several other development areas with a combined taxable real property assessment at the time they were established of approximately \$1.524 billion. The taxable real property assessment of the Development Area for calendar year 2017 is approximately \$4,442,910, and that amount combined with

the previous development areas established by Louisville Metro totals \$1.529 billion, while the total taxable real property assessment for Louisville exceeds \$59 billion, 20% of which is \$11.8 billion.

E. The conditions within the Development Area meet three (3) of the seven (7) factors of blight as set forth in KRS 65.7049 and are as follows:

1. **Substantial loss of residential, commercial or industrial activity or use.** Because of the declining condition of the buildings in the Development Area, many of the buildings are boarded up and unoccupied, with a current occupancy rate of 45%.
2. **Forty percent (40%) or more of the households are low income households.** The Development Area includes an older apartment complex whose residents are primarily low income households.
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, particularly if 200 of the units are to remain available for workforce housing post-renovation. 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 redevelopment of the proposed Project will have a positive impact on Louisville Metro and the surrounding area, especially the impact on Arcade Avenue and the Taylor Berry neighborhood.

- F. The Development Area will not reasonably be developed without public assistance, including incentives as provided by the Act. The high cost of site development expenses needed for the Project makes public incentives critical to the financing of the Project when compared with low potential revenue generated by these improvements.
- G. The public benefits of redeveloping the Development Area justify the public costs proposed. The investment in the Development Area will result in significant returns through increased property valuations for the surrounding area, facilitate secondary and tertiary re-development within the area. The Development Area has a 2017 taxable assessment of approximately \$4,441,910 and annually generates \$21,201 in ad valorem real property taxes to Louisville Metro. The Project will increase capital investment by approximately \$29.3 million, 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 \$2,066,258, to provide redevelopment assistance to the project, including public infrastructure improvements, it will retain 20% of the new incremental increase of the local ad valorem real property taxes from the

Development Area. Further, the existing ad valorem real property taxes will be retained by Louisville Metro. Therefore, even when considering the requested incentives for the Project from Louisville Metro, the Project will be financially beneficial to Louisville Metro. The Project will also serve as a catalyst for additional development in the area surrounding the Development Area.

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

**SECTION III.** The Development Area as illustrated and described in Exhibit B is designated as a development area pursuant to the Act and shall be named the Vesta Derby Oaks Development Area. The Development Area shall be established as of the effective date of this Ordinance and shall terminate on the earlier of (a) the termination of the Local Participation Agreement, attached hereto as Exhibit C, or (b) 25 years from the date hereof, provided that in no case the termination date will be more than twenty (20) years from the activation date.



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

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

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

- A. An accounting of all payments made to the Authority pursuant to the Local Participation Agreement;
- B. An analysis and review of development activity within the Development Area;

- C. The progress made toward meeting the stated goals of the Development Area;
- D. An accounting of the Approved Project Costs and other Project Costs incurred by the Developer.

**SECTION VII.** That the Council authorizes Louisville Metro to pay annually to the Authority, the Released Amount which shall be calculated as provided in the Local Participation Agreement, not to exceed a sum equal to 80% of the Louisville Metro Ad Valorem Real Property Tax Increment, as that term is defined in the Local Participation Agreement subject to the following condition: in no event shall the total of the Released Amount paid to the Authority over the term of the Local Participation Agreement exceed \$2,066,258 as set forth in the Local Participation Agreement.

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

**SECTION IX.** That the Mayor and other appropriate Louisville Metro officials, and each of them, for and on behalf of Louisville Metro, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution of the Local Participation Agreement, the performance of all obligations of Louisville Metro under and pursuant to the Local Participation Agreement and related documents, and the performance of all other actions of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and the Local Participation Agreement. The Mayor and other appropriate Louisville Metro officials, and each of them, are hereby further authorized, empowered and directed for and on behalf of Louisville Metro to execute all papers, letter, documents, undertakings, certificates, assignments, forms,

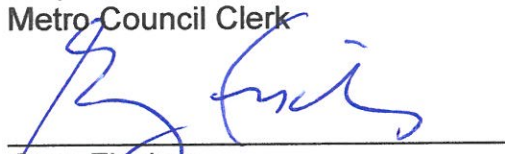


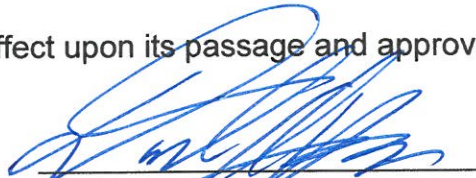
instruments and closing papers that may be required for the carrying out and effectuation of the authority conferred by and for the purposes of this Ordinance and the Local Participation Agreement, or to evidence said authority and purposes, and to exercise and otherwise take all action necessary to the full realization of the rights and purposes of Louisville Metro under the Local Participation Agreement and related documents and to perform all of the obligations of Louisville Metro under the Local Participation Agreement and related documents.

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

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

  
Stephen Ott  
Metro Council Clerk


  
Greg Fischer  
Mayor

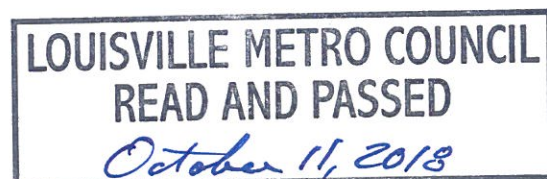
  
David James  
President of the Council

  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

By:   
O-342-18



## **Exhibits**

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

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

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**Development Plan**

**For**

**Vesta Derby Oaks**

**Louisville/Jefferson County Metro Government**

**\_\_\_\_\_, 2018**

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**Development Plan**  
**The Vesta Derby Oaks Development Area**

**1. Introduction.**

**1.1. Purpose.** The Louisville/Jefferson County Metro Government (“Louisville Metro”) intends to establish the **Vesta Derby Oaks Development Area** (the “Development Area”) pursuant to the provisions of KRS 65.7041 to 65.7083, as the same may be amended (collectively, the “Act”), to encourage the redevelopment of a multifamily residential redevelopment project being undertaken by Middleburg Real Estate Partners, LLC, a Virginia limited liability company, or an affiliate of same (the “Developer”), to be located at and adjacent to 1500 Oleanda Court, 1401, 1423 and 1500 Arcade Avenue, 1427, 1500 and 1503 ½ Earl Avenue, and 1501 Phyllis Street, Louisville, Kentucky. The Developer proposes to redevelop an older apartment complex (Arcadia Apartments) that was built in the 1950s into a 418 unit multifamily mixed-income housing community, all of which will cost approximately \$29.3 million (the “Project”). Louisville proposes to support the Project and provide redevelopment assistance through a pledge of a portion of the incremental increase in local, Louisville Metro ad valorem real property taxes generated within the Development Area as a result of the Project.

**1.2.** The Project will renovate, improve and maintain an affordable housing option for Louisville Metro, including the complete replacement of all roofs, gutters, siding, lighting and other improvements to both the interior and the exterior of the buildings, making energy efficiency improvements to both the buildings and the appliances, replacing all electrical and plumbing, removing all asbestos-containing

materials, as well as making landscaping improvements throughout the property, installing a dog park, playground, grill stations and two laundry facilities, as well as installing a camera surveillance system.

**1.3.** The redevelopment plan for the Project will redevelop and renovate an older apartment complex, which was built in the 1950s. In addition to contributing and supporting Louisville Metro's explicit goal of increasing and preserving affordable housing stock in Louisville Metro, this project will also improve the landscaping and public infrastructure on the site.

**1.4 Size and Location.** The Development Area is an approximately 24.0573 acre area in the Taylor Berry neighborhood of Louisville identified more specifically on the map attached as Exhibit "A".

## **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 24.0573 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 \$1.524 billion. The taxable real property within the Development Area for calendar year 2016 is approximately \$4,441,910, and that combined with the other development areas that have been established by Louisville Metro totals approximately \$1.529 billion in taxable real property assessment. The total assessed value of taxable real property within Louisville Metro for the calendar year 2017 exceeds \$59 billion, 20% of which is \$11.8 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 three (3) of the seven (7) qualifying characteristics as follows:

1. **Substantial loss of residential, commercial or industrial activity or use.** Because of the declining condition of the buildings on the site, many of the buildings are boarded up and unoccupied, with a current occupancy rate is 45%.
2. **Forty percent (40%) or more of the households are low income households.** The Development Area includes an older apartment complex that whose residents are primarily low income households.
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, particularly if the buildings are to be renovated and the units will be available for workforce housing. 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 redevelopment of the proposed Project will have a positive impact on Louisville Metro and the surrounding area, especially the impact on Arcade Avenue and the Taylor Berry neighborhood.

**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 and will facilitate secondary and tertiary re-development within the area. The Development Area has a 2016 taxable assessment of approximately \$4,441,910 and currently generates \$21,201 in ad valorem real property taxes to Louisville Metro. The Project will increase capital investment by approximately \$29,300,000, 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 \$2,066,258, to provide redevelopment assistance to the project, it will retain 20% of the new incremental increase of the local ad valorem real property taxes from the Development Area. Further, the existing ad valorem real property taxes will be retained by Louisville Metro.

The Project will have the following income restrictions post-renovation with respect to 200 of the 418 units: 27 of the one-bedroom units, 108 of the two-bedroom units and 65 of the three-bedroom units will be rented to income eligible tenants at rates

not to exceed the applicable 80% AMI Cap for that year for that type of unit. Therefore, even when considering the requested incentives for the Project from Louisville Metro, the Project will be financially beneficial to Louisville Metro.

**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 area immediately surrounding the Development Area has not been subject to growth and development by private investment. The proposed improvements within the Development Area will have a positive effect on the surrounding area, which faces stagnation in development without them.

**2.6. 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 24.0573 acres in the Taylor Berry neighborhood of Louisville. The existing site consists of approximately 69 buildings on the site, originally built in the 1950s, that is currently being used to provide housing, primarily to low income residents.

**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.**

The Development is expected to update and continue an affordable housing option for the residents of Louisville Metro.

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

Louisville Metro proposes to provide redevelopment assistance and pay for Project costs through a pledge of a portion of the incremental increases in tax revenues from local ad valorem real property taxes from the Development Area. Louisville Metro proposes to pay annually to the Agency, as defined in the Local Participation Agreement, the Released Amount which shall be calculated as provided in the Local Participation Agreement as follows: 80% of the Louisville Metro Ad Valorem Real Property Tax Increment, as that term is defined in the Local Participation Agreement, subject to the following condition: in no event shall the total of the Released Amount paid to the Agency over the term of the Local Participation Agreement exceed \$2,066,258 as more particularly set forth in the Local Participation Agreement. The projected incremental revenues and proposed time frame of the financial obligations is



attached as Exhibit "B."

Louisville Metro will establish a special fund for the deposit of pledged incremental revenues as required by KRS 65.7061. Pledged incremental revenues deposited into this special fund will be used solely to reimburse the Developer for redevelopment assistance or pay for project costs in compliance with this Development Plan, the Act, and all agreements and documents entered into in connection therewith. Louisville will enact an ordinance establishing the Development Area and adopting this Development Plan. The development area ordinance will designate the Metro Development Authority, Inc. (the "Agency"), organized by Louisville Metro, as the entity in charge of overseeing, administering and implementing the terms of the development ordinance.

## **5. Conclusions.**

In conclusion, the Project will serve as an important catalyst to the further development of the Taylor Berry neighborhood in Louisville and surrounding areas, will generate significant new tax revenues to Louisville Metro, and will facilitate the modernization and continuation of affordable 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**

Being Lots 2, 3, 4, 5, 6, 7, 8 and 9, Plan of Arcadia Apartments, plat of which is of record in Plat and Subdivision Book 10, Page 33, and re-recorded in Plat and Subdivision Book 10, Page 52, both in the Office of the Clerk of Jefferson County, Kentucky.