

LOCAL PARTICIPATION AGREEMENT

This **LOCAL PARTICIPATION AGREEMENT** (the "Agreement") effective as of the 18th day of December, 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 along with the related public infrastructure and public amenities, at a cost of 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. 132, 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 the 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) 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

3.7 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 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 0.4921 per hundred dollar 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 \$24,605.00.

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. 5 th St., Ste. 600 Louisville, Kentucky 40202
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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.

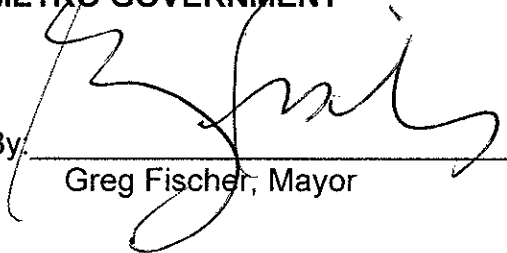
8.7 Further Assurances. Each of the parties hereto shall use reasonable efforts and cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments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

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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

Approved as to Form and Legality:

By: 

Name Nicholas Lococo
Title: Assistant Jefferson County Attorney

EXHIBIT A

PROJECT DESCRIPTION

The Axis on Lexington Project will involve new capital investment of approximately \$40 million and be a multi-family residential project with 300 rental residential apartments with site and utility public infrastructure improvements.

EXHIBIT B

ESTIMATE OF NEW REAL ESTATE TAX REVENUE

2017	132,719
2018	228,827
2019	233,403
2020	238,071
2021	242,833
2022	247,689
2023	252,643
2024	257,696
2025	262,850
2026	268,107
2027	273,469
2028	278,938
2029	284,517
2030	290,207
2031	296,011
2032	301,932
2033	307,970
2034	314,130
2035	320,412
2036	326,821