

**DEVELOPMENT AND**  
**TIF DISBURSEMENT AGREEMENT**

This Development and Tax Increment Financing (TIF) Disbursement Agreement (the "Agreement") entered into this 15<sup>th</sup> day of September 2016 by and among **METRO DEVELOPMENT AUTHORITY, INC.**, a Kentucky non-profit, non-stock corporation organized on behalf of Louisville/Jefferson County Metro Government pursuant to Chapter 58 of the Kentucky Revised Statutes ("MDA") with its principal address located at 444 South Fifth Street, Suite 600, Louisville, Kentucky 40202, **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, with its address at 527 W. Jefferson Street, Louisville, Kentucky 40202 ("Louisville") and **LOUISVILLE BROADWAY APARTMENTS, LLC**, an Ohio limited liability company, with its principal address located at 495 South High Street, Suite 150, Columbus, OH 43215 ("Developer").

**RECITALS:**

**WHEREAS**, Developer is undertaking a multi-family residential project in the Original Highlands neighborhood of Louisville, consisting of approximately 195 rental residential apartments and improvements to an existing parking garage, all of which will cost approximately \$26.5 million, as more particularly described in Section 1.01.B of this Agreement ("Project"); and

**WHEREAS**, the Louisville Metro Council, pursuant to Ordinance No. 142, Series 2016, enacted on August 11, 2016 ("Ordinance"), established the site on which the Project is to be located as a tax increment district pursuant to KRS 65.7041-65.7083 ("Act") to be known as the Mercy Development Area ("Development Area") and authorized the release of a portion of the increment local ad valorem real property taxes ("Incremental Taxes"); and

**WHEREAS**, Louisville and MDA entered in a local participation agreement, dated August 31, 2016 (“Local Agreement”), as authorized by the Ordinance and the Act to establish the terms and conditions for the release of Incremental Taxes generated by the Project within the Development Area; and

**WHEREAS**, Developer acknowledges that but for the release of the Incremental Taxes, it would not be able to undertake the Project; and

**WHEREAS**, the parties desire to enter into this Agreement to establish the obligations of Developer to undertake the Project and to establish the terms and conditions for the payment of the Incremental Taxes by MDA to Developer.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, MDA, Louisville and Developer agree as follows:

### **ARTICLE I**

#### **OBLIGATIONS OF DEVELOPER**

##### **SECTION 1.01. Design, Construction and Operation of Project.**

- A. Developer agrees that the design of the Project shall be consistent with best architectural practices and appropriate urban design principles.
- B. The Project shall consist of a building containing approximately 195 rental residential apartment units and improvements to an existing parking garage.
- C. Developer shall commence construction of the Project no later than August 1, 2017 and substantially complete construction by August 1, 2020.
- D. Upon completion of the Project, Developer agrees to operate the Project in a first

class manner and to use its best efforts to keep all residential units fully leased.

E. Developer further agrees to lease 19 efficiency apartments (each referred to individually as an “Efficiency” and collectively as “Efficiencies”) at a rent level not to exceed the then current 80% AMI Cap, as hereinafter defined. The 80% AMI Cap means that the combined amount of (i) the contract rent amount for the Efficiency and (ii) if the contract rent amount for the Efficiency does not include utilities, the utility allowance as annually adjusted (for 2016, the utility allowance is \$100), cannot exceed the 80% gross rent limit for an efficiency for the Louisville, KY-IN HUD Metro FMR Area. This information is updated by the United States Department of Housing and Urban Development on an annual basis, and can be found at: <https://louisvilleky.gov/government/housing-community-development/louisville-cares>. A copy of the 80% AMI Cap for 2016 (\$938 gross rent, which less the \$100 utility allowance, has a cap of \$838 per month in contract rent), is attached to this Agreement as Exhibit D.

Notwithstanding the foregoing, a lease does not have to change the amount of the rent mid-lease to stay in compliance with the 80% AMI Cap. At the expiration of the term of such lease, the current 80% AMI Cap would then apply to any new lease, including renewal, of that Efficiency.

F. Notwithstanding any provision of this Agreement to contrary, the Project shall comply, in all material respects, with all federal, state and local laws, codes, ordinances, statutes and regulations (as modified by any applicable variance or special exceptions).

G. Developer shall not refuse to hire or employ, or bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of sex, race, creed, color, national origin, sexual orientation, gender identification, age or disability. At all times during the construction of the Project,

Developer shall take reasonable steps to insure that its employees and the employees of its contractors and subcontractors are treated equally during employment, without regard to their sex, race, creed, color and national origin, sexual orientation, gender identification, age or disability and that its contractors and subcontractors that are constructing the Project do not refuse to hire or employ, or bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges of employment because of sex, race, creed, color, national origin, sexual orientation, gender identification, age or disability. This requirement shall apply to, but not be limited to, the following: employment, promotion, demotion and transfer; recruitment, advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training.

H. Upon completion of the Project, Developer agrees to abide by all fair housing laws and will not discriminate on the basis of race, sex, color, creed, disability, sexual, orientation, gender identification, age or national origin, in the lease, rental, use or occupancy of the Project.

I. Developer shall provide evidence satisfactory to MDA and Louisville that it has obtained the insurance described on Exhibit A, attached hereto and made a part hereof.

J. Except as may otherwise be provided herein and except for claims arising as a result of a default hereunder by Louisville or MDA, Developer agrees to indemnify Louisville and MDA against any third party claim or filing of any mechanic's or materialman's lien on any part of the Project as a result of Developer's construction of the Project and shall hold Louisville and MDA harmless, to the extent permitted by law, from any and all such third party claims or liens, except to the extent any such third party claim or lien is caused by the negligent act or omission or intentional or willful misconduct of Louisville, MDA or any of their employees or

agents acting within the scope of their employment or agency.

K. Developer agrees to maintain during the term of the Agreement, Efficiencies records evidencing that the rental rates for the Efficiencies satisfy the 80% AMI Cap. Specifically, Developer shall keep copies of all leases with respect to the Efficiencies for both the duration of the lease and for a period of five (5) years after the expiration of the lease. Louisville shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or any public accounting firm selected by it.

**SECTION 1.02. Certification.** Developer shall provide to MDA, no later than forty-five (45) days after the end of each calendar year during the term of this Agreement, certifications, substantially in the form of Exhibit B, attached hereto and incorporated herein by reference, as to the use of proceeds of the Incremental Taxes during the preceding calendar year.

**SECTION 1.03. Reporting of Project Costs.** Developer shall submit to MDA, on a quarterly basis, beginning on the effective date of this Agreement, documentation evidencing the actual expenditures made by Developer on the Project.

**SECTION 1.04. 80% AMI Reporting Requirement.** Developer shall submit to MDA, on an annual basis, at the same time Exhibit B is provided to MDA, a certification substantially in the form of Exhibit C, attached hereto and incorporated herein by reference, evidencing that the 19 efficiency units are in compliance with the 80% AMI Cap.

**SECTION 1.05. Additional Reporting Requirements.**

Developer, on an annual basis, shall report to MDA:

- A. An analysis and review of all development activity on the Project; and
- B. The progress made by Developer toward the stated goals of the Development

Area, as set forth in the Ordinance; and

C. Any other reports or analysis requested by MDA or Louisville.

## ARTICLE II

### OBLIGATIONS OF MDA

**SECTION 2.01.** Compliance with Agreements. MDA covenants to comply fully with all obligations and requirements established by the Act, the Ordinance, and the Local Agreement and not permit any event of default to occur that is not cured within a reasonable period.

**SECTION 2.02.** Payment of Incremental Taxes.

A, Provided Developer is not in default of its obligations under this Agreement, MDA agrees to pay to Developer the Incremental Taxes, as provided in this Section during the term of this Agreement, beginning in the year following the year of the Activation Date.

B. The Incremental Taxes shall be paid annually to Developer on or before December 31 of each year, and shall be an amount equal to (i) for the first ten (10) years of this Agreement, a sum equal to 100% of the Incremental Taxes, pursuant to the Local Agreement, and (ii) for the second ten (10) years of this Agreement, a sum equal to sixty-five percent (65%) of the Incremental Taxes, pursuant to the Local Agreement. Notwithstanding the foregoing, this period of twenty (20) years shall terminate sooner if the aggregate amount of the Incremental Taxes paid to Developer equals \$2,605,550. Each year, Developer shall submit a request for payment of the Incremental Taxes on or before December 1, together with a copy of the tax bill for the Project and evidence that the tax bill was fully paid.

## ARTICLE III

### OBLIGATIONS OF LOUISVILLE

**SECTION 3.01. Compliance with Local Agreement.** Louisville agrees to comply fully with the requirements established by the Act, the Local Agreement and this Agreement and to pay the Incremental Taxes to MDA each year during the term of this Agreement, as required by the Local Agreement.

#### **ARTICLE IV**

##### **TERM**

**SECTION 4.01. Term.** This Agreement shall be effective as of the date hereof and terminate upon the earlier of the following dates:

- A. the date twenty-one (21) years from the activation date of the Development Area;
- or
- B. the date the aggregate amount of the Incremental Taxes Amount paid to Developer equals \$2,605,559; or
- C. the date Developer breaches the terms of this Agreement, as provided in Article VI of this Agreement, whichever event occurs earliest.

#### **ARTICLE V**

##### **CONDITIONS PRECEDENT TO PAYMENT OF THE INCREMENTAL TAXES**

**SECTION 5.01. Conditions Precedent.** MDA shall be under no obligation to pay the Incremental Taxes to Developer unless and until:

- A. Developer is in compliance with its obligations, pursuant to Article I of this Agreement;
- B. MDA and Louisville have executed the Local Agreement;
- C. Developer shall have provided notice to MDA of its election when to establish the Activation Date, as defined in the Local Agreement.

D. Developer shall have submitted the request for payment pursuant to Section 2.02B.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

**SECTION 6.01. Default by Developer.** If Developer materially breaches or defaults on its obligations under this Agreement, including but not limited to (i) failure to undertake the Project, (ii) failure to use the Incremental Taxes solely for the Project, including but not limited to, reimbursement for expenses incurred in connection with the Project after the date of this Agreement, or (iii) failure to supply to MDA on a timely basis, all information and reports required to be submitted by Developer, pursuant to this Agreement, or (iv) failure to offer the 19 efficiency units at rates that do not exceed the 80% AMI Cap, or (v) after completion of the Project, failure to operate the Project as a residential development, MDA may give written notice to Developer that remedial action must be taken within thirty (30) days to cure said default. Developer shall cure the default within thirty (30) days, or, if the default is not reasonably curable within such period, Developer may continue to cure the default so long as MDA is satisfied that reasonable progress is being made toward a cure. If such corrective action is not taken by Developer, MDA may terminate this Agreement and shall be under no further obligation to pay the Incremental Taxes to Developer. In addition, MDA shall be entitled to any remedy or damages available to it in law or equity.

**SECTION 6.02. Default by MDA or Louisville.** If MDA or Louisville materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, Developer may give written notice to MDA and Louisville that remedial action must be taken within thirty (30) days after MDA's and Louisville's receipt of such written



notice. However, if the default is not reasonably curable within thirty (30) days, MDA or Louisville, as appropriate, may continue to cure the default or breach so long as Developer is satisfied that sufficient progress is being made toward a cure. If such action is not taken, Developer shall be entitled to any remedy or damages available to it in law or equity.

**SECTION 6.03. Notices.** All notices or communications hereunder from any party to the other shall be hand delivered, mailed by first class mail or overnight delivery to the addresses below:

If to MDA: Metro Development Authority, Inc.  
c/o Economic Development Department  
444 S. Fifth Street, Suite 600  
Louisville, KY 40202  
Attn: Jeff Mosley

If to LOUISVILLE: Economic Development Department  
444 S. Fifth Street, Suite 600  
Louisville, KY 40202  
Attn: Jeff Mosley

If to DEVELOPER: Louisville Broadway Apartments, LLC  
495 South High Street, Suite 150  
Columbus, OH 43215  
Attn: \_\_\_\_\_

**SECTION 6.04. Miscellaneous.**

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

B. **Severability.** If any clause, provision, or section of this Agreement shall 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.

C. **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 within the Commonwealth of Kentucky.

D. **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.

E. **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.


F. **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.

WITNESS the signatures of the authorized representatives of the parties effective as of the date first written above.


**“MDA”**  
**METRO DEVELOPMENT AUTHORITY, INC.,**  
a Kentucky non-profit, non-stock corporation organized  
on behalf of Louisville/Jefferson County Metro Government

By:   
MARY ELLEN WIEDERWOHL, President

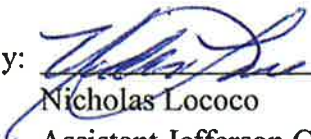
**“LOUISVILLE”  
LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT**

By:   
GREG FISCHER, Mayor

**“DEVELOPER”  
LOUISVILLE BROADWAY APARTMENTS, LLC**

By:   
Title: VICE PRESIDENT

**Approved as to Form:  
MICHAEL J. O’CONNELL  
JEFFERSON COUNTY ATTORNEY**

By:   
Nicholas Lococo  
Assistant Jefferson County Attorney  
531 Court Place, Suite 900  
Louisville, Kentucky 40202  
(502) 574-6876 (Phone)  
(502) 574-5573 (Fax)

**EXHIBIT A**  
**INSURANCE REQUIREMENTS**

**I. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

Developer shall indemnify, hold harmless, to the extent permitted by law, and defend Louisville, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from Developer's (or Developer's Subcontractors, if any) performance or breach of the Agreement provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the intentional negligent act or omission of Louisville, its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

**II. INSURANCE REQUIREMENTS**

Prior to Developer commencing this Agreement, Developer shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the Commonwealth of Kentucky. All insurance required under this Agreement must be obtained and copies of policies or certificates thereof shall be submitted to and approved by Louisville (who may request review by the Louisville's Risk Management Division) prior to this Agreement taking effect.

Without limiting Developer's indemnification requirements, it is agreed that Developer shall maintain in force at all times during this Agreement the following policy or policies of insurance covering its operations.

A. The following clauses shall be added to Developer's Commercial General Liability Policy:

1. "Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the Agreement."

B. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the Agreement:

1. COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage including:

a. Premises - Operations Coverage

- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

### **III. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "B+ VI", unless proper financial information relating to Developer is submitted to and approved by Louisville's Risk Management Division.

### **IV. MISCELLANEOUS**

A. Developer shall procure and maintain insurance policies as described herein and for which Louisville shall be furnished Certificates of Insurance upon the execution of the Agreement. The Certificates shall include provisions stating that the policies may not be cancelled or non-renewed, without Louisville having been provided at least (30) thirty days written notice. The Certificates shall identify the Agreement to which they apply and shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Agreement, renewal Certificates of Insurance shall be furnished to Louisville 30 days before the expiration date.

B. Certificates of Insurance, as required above shall be furnished to:

Louisville/Jefferson County Metro Government  
Finance Department, Risk Management Division  
611 West Jefferson Street  
Louisville, KY 40202

C. Developer shall notify Louisville's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions of Developer's insurance coverage) in coverage as required above, Developer shall notify Louisville's Risk Management Division within two (2) business days. If Developer fails to notify Louisville as required by this Agreement, Developer agrees that such failure shall be a breach of this Agreement. Louisville reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by Louisville, a copy of the policy endorsement shall be provided to Louisville's Risk Management Division.

D. Approval of the insurance by Louisville shall not in any way relieve or decrease the liability of Developer hereunder. It is expressly understood that Louisville does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Developer.





**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
LOCAL PARTICIPATION AGREEMENT  
FOR THE  
MERCY PROJECT  
WITHIN THE  
MERCY DEVELOPMENT AREA**