

**SECOND AMENDED AND RESTATED LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT LOCAL PARTICIPATION AGREEMENT  
FOR THE  
LOUISVILLE DOWNTOWN REVITALIZATION DISTRICT  
DEVELOPMENT AREA**

## SECOND AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT

This **SECOND AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT** (the "Amended Agreement") effective as of the 30<sup>th</sup> day of January, 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**, Louisville and the Authority entered into an Amended and Restated Local Participation Agreement dated December 6, 2007, pursuant to the authorization entered in Ordinance No. 179, Series 2007 ("Ordinance"), for the release of certain incremental local taxes pursuant to KRS 65.7041-65.7083 and KRS 154.30.010-154-30.090 (the "Act") concerning the project ("Project") to be developed within the Central Downtown Revitalization District Development Area ("Development Area") established by the Ordinance; and

**WHEREAS**, the Project has not occurred, but a new project is proposed within the Development Area as amended by Ordinance No. 5, Series 2015 ("New Project"); and

**WHEREAS**, Omni Louisville, LLC ("Omni"), the Authority and the Parking Authority of River City, Inc. ("PARC") have entered into a Development Agreement dated December 9, 2014 ("Development Agreement") wherein Omni agrees to construct a mixed-use development in downtown Louisville including a 600 room hotel, 225 residential housing units, a grocery store, restaurants and retail; a parking garage with no fewer than 820 spaces, and other public infrastructure and public amenities, as more particularly described in the Development Agreement (the "New Project");

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

**WHEREAS**, the New Project may qualify for a pledge of State incremental revenues as a "Signature Project" pursuant to the Act (the "Act") under the Signature Project Program as provided in the Act, relating to incentives for development and redevelopment; 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 or contract with an agency in acknowledgement of benefits to be derived by

Louisville within a development area in order to promote the public purpose of Louisville; and

**WHEREAS**, the Ordinance declares the Development Area to be a "development area" within the meaning of the Act, and the New Project constitutes a "project" within the meaning of the Act; and

**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; and

**WHEREAS**, Louisville desires to assist Omni, through the Authority, with the costs of the New Project and agrees to enter into this Amended Agreement in order to release to the Authority a portion of the Withholding Tax Increment, Real Estate Tax Increment and Transient Room Tax Increment (as hereinafter defined) for use solely for purposes of the New Project in accordance with the terms of the Development Agreement; 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 Amended Agreement shall have the meanings assigned in this Section 1 unless the context clearly indicates that a contrary meaning is intended:

(a) **"Account Numbers"** shall mean the separate Withholding Tax Numbers for businesses located in the Development Area as determined pursuant to Section 3.1 of this Amended Agreement.

(b) **"Activation Date"** means a date no later than December 27, 2017.

(c) **"Base Year"** means January 1, 2006 through December 31, 2006.

(d) **"Bonds"** means the municipal bonds, notes or other debt instruments to be issued by Louisville for the benefit of the New Project in accordance with the Amended Development Agreement.

(e) **"Calendar Year"** means January 1 through and including December 31.

(f) **"Commencement Date"** means December 6, 2007.

(g) **"Development Area"** means the Central Downtown Revitalization District Development Area established by Ordinance No. 179, Series 2007 and amended by Ordinance No. 5, Series 2015.

(h) **"Project Costs"** means all costs incurred to complete construction of the New Project in accordance with the terms of the Amended Development Agreement included, but not limited to, demolition, permitting, design, hard and soft construction costs, financing and underwriting costs, installation of utilities and land acquisition.

(i) **"Existing Business"** means any business operating in Louisville as of the effective date of this Amended Agreement and located outside of the Development Area.

(j) **"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 Amended Agreement.

(k) **"New Transient Room Tax Revenue"** means the amount of Transient Room Taxes received by Louisville each year after the Activation Date has occurred through the term of this Amended Agreement.

(l) **"New Withholding Tax Revenue"** means the amount of Withholding Taxes received by Louisville after the Activation Date has occurred through the term of this Amended Agreement.

(m) **"Occupational License Fees"** means the taxes levied on employees by Louisville pursuant to Louisville Metro Codified Ordinances Chapter 110.

(n) **"Office"** means the Kentucky Economic Development Finance Authority ("KEDFA"), as provided in the Act.

(o) **"Office of Management and Budget"** means the department of Louisville with that name.

(p) **"Old Real Estate Tax Revenue"** means the amount of Real Estate Taxes received by Louisville in the Base Year.

(q) **"Old Transient Room Tax Revenue"** means the amount of Transient Room Taxes received by Louisville in the Base Year.

(r) **"Old Withholding Tax Revenue"** means the amount of Withholding Taxes received by Louisville in the Base Year and provided that if an Existing Business relocates within the Development Area, the Old Withholding Tax Revenue shall be increased by an amount equal to the Withholding Taxes from that Existing Business paid to Louisville for the preceding calendar year prior to the date of operation within the Development Area.

(s) **"Real Estate Tax"** means the real estate taxes levied annually by Louisville applicable to real property within the Development Area.

(t) **"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.

(u) **"Released Amount"** means the amount payable in each Calendar Year from Louisville to the Authority pursuant to Section 5.8 of this Amended Agreement.

(v) **"Transient Room Tax"** means the tax levied annually by Louisville pursuant to KRS 91A.390 on the rent for every occupancy of a suite, room or rooms charged by all persons, companies, corporations, or other like or similar persons, groups or organizations doing business as motor courts, motels, hotels, inns or like or similar accommodations businesses within the Development Area.

(w) **"Transient Room Tax Increment"** means the incremental amount of Transient Room Taxes collected in each Calendar Year following the Activation Date, during the term hereof, determined by subtracting the amount of Old Transient Room Tax Revenue from the amount of New Transient Room Tax Revenue.

(x) **"Termination Date"** means the date ending thirty (30) years from the Activation Date, unless terminated earlier pursuant to Section 4.1 of this Amended Agreement.

(y) **"Withholding Taxes"** means the Occupational License Fees received by Louisville from or attributable to the Development Area.

(z) **"Withholding Tax Increment"** means the incremental amount of Withholding Taxes collected in each Calendar Year following the Activation Date, during the term hereof, determined by subtracting the amount of Old Withholding Tax Revenue from the amount of New Withholding Tax Revenue.

## **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 Amended Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Amended Agreement, in accordance with its terms and conditions. The officers and officials

executing and delivering this Amended Agreement on behalf of the Authority have been or are otherwise duly authorized to enter into this Amended Agreement on behalf of the Authority.

**(c) Validity of Agreement; Compliance with Law.** This Amended 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 Amended 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 Amended 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.

**(f) Tax Incentive Agreement.** The Authority shall file with the Office an amendment to amend the Project Grant Agreement previously entered into between the Commonwealth of Kentucky and the Authority dated December 27, 2007 to incorporate the elements of the New Project and the changes to the boundaries of the Development Area pursuant to the Amended Ordinance, such agreements now being referred to as Tax Incentive Agreements.

**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 Amended Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Amended Agreement in accordance with its terms and conditions as contemplated by the Act. Each of the officials executing and delivering this Agreement on behalf of Louisville has

been and is duly authorized to enter into this Amended Agreement on behalf of Louisville.

**(b) Validity of Agreement; Compliance with Law.** This Amended Agreement is the legal, valid and binding obligation of Louisville enforceable in accordance with its terms and conditions. The execution and delivery of this Amended 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. Withholding Taxes.**

**3.1 Account Numbers.** Omni shall have the sole responsibility to identify all businesses located in the Development Area and to provide adequate information concerning those businesses to the Authority so that Louisville can assign separate Withholding Tax numbers (the "Account Numbers") for each business situs and each employer in the Development Area, as more particularly described in the Amended Development Agreement. The Account Numbers shall be used exclusively to report Withholding Taxes within or attributable to the Development Area. Louisville agrees to cooperate with and assist the Authority to obtain account numbers.

**Section 4. Released Amount.**

**4.1 Term.** Provided that the provisions of Section 4.2 are met, 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, in accordance with Section 4.5 of the Amended Agreement, and for successive calendar years continuing automatically thereafter until the earlier of the following: (i) that date thirty (30) years following the initial payment to the Authority; or (ii) the aggregate of the total of the Released Amount paid to the Authority by Louisville and the aggregate Released Amount paid to the Authority by the Commonwealth on a cumulative basis during the term of the Amended Agreement equals the Project Costs.

**4.2 Certification of Minimum Capital Investment.** Prior to any Released Amount being paid by Louisville to the Authority for the New Project, the Office shall certify to Louisville that the minimum capital investment of as set forth in the Tax Incentive Agreement has been made as required by the Act. Any amount of the Released Amount received after the Activation Date but prior to certification of the Minimum capital investment being made shall be held in a non-interest bearing escrow account by Louisville until the minimum capital investment is certified by the Office. All accumulated amounts of the Released Amount shall be released to the Authority upon certification. If the minimum capital investment is not certified within then (10) years from the Activation Date, the escrow shall be forfeited to Louisville and this Amended Agreement shall be void.

**4.3 The Authority Reporting.** Omni shall be responsible for submitting 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 Amended 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 Omni 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 New Project and the Development Area;

**4.4 Louisville Monitoring, Tracking and Reporting.** The Office of Management and Budget shall oversee the payment of the Released Amount to the Authority and shall review all reports received from the Commonwealth pursuant to Section 4.3 or otherwise concerning the Project, its progress, and Project Costs. The Office of Management and Budget shall review all reports received from the Authority pursuant to Section 4.4 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 Omni toward the stated goals of the Development Area as reported to Louisville by the Authority; and

(d) An accounting of the amount of Project Costs incurred by Omni to date.

Omni shall provide to the Authority and Louisville all information required to make the report.

**4.5 Time of Payment.** In the year the minimum capital investment is certified by the Office, and each year thereafter during the Term, Louisville shall pay the Released Amount to the Authority so that the periodic interest and principal payments required to amortize the Bonds can be made on a timely basis.

**4.6 Use of Released Amount.** Consistent with the Act, the Authority covenants and agrees that it will use the Released Amount solely for payment of the Bonds pursuant to the requirements of the Act.



## **Section 5. Determination of Released Amount.**

**5.1 Old Withholding Tax Revenue, Old Real Estate Tax Revenue, and Old Transient Room Tax Revenue.** The Authority shall calculate with reasonable accuracy the amounts of Old Withholding Tax Revenue, Old Real Estate Tax Revenue and Old Transient Room Tax Revenue, and in doing so, the Authority may make such assumptions as may reasonably be required. Omni, at its sole expense, shall provide to the Authority all information required for the calculation on a timely basis. Louisville, through the Office of Management and Budget, agrees to provide the Authority with such assistance and documentation as may reasonably be required to calculate the amounts of the Old Withholding Tax Revenue, Old Real Estate Tax Revenue and Old Transient Room Tax Revenue. The Authority shall submit its calculations of the Old Withholding Tax Revenue, Old Real Estate Tax Revenue and Old Transient Room Tax Revenue to the Office of Management and Budget for review and approval. Upon the determination of Old Withholding Tax Revenue, Old Real Estate Tax Revenue and Old Transient Room Tax Revenue, Louisville and the Authority shall stipulate the amount of Old Withholding Tax Revenue and Old Real Estate Tax Revenue by written addendum to this Amended Agreement. The amount of Old Withholding Tax Revenue, Old Real Estate Tax Revenue and Old Transient Room Tax Revenue so stipulated shall be binding upon the parties for the term of this Amended Agreement.

**5.2 New Withholding Tax Revenue.** The Office of Management and Budget shall calculate the amount of New Withholding Tax Revenue each year after the Activation Date, prior to the Time of Payment pursuant to Section 4.5 of this Amended Agreement. The Office of Management and Budget shall calculate the New Withholding Tax Revenue by aggregating the Withholding Taxes reported by businesses within the Development Area which have obtained Account Numbers for each business situs and each employer in the Development Area.

**5.3 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 4.5 of this amended 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.

**5.4 New Transient Room Tax Revenue.** The Office of Management and Budget shall calculate the amount of New Transient Room Tax Revenue each year after the Activation Date, prior to the Time of Payment pursuant to Section 4.5 of this Amended Agreement.

**5.5 Calculation of Withholding Tax Increment.** The Office of Management and Budget in each year following the Activation Date, prior to the Time of Payment pursuant to Section 4.5 of this Amended Agreement, shall calculate the Withholding Tax Increment, which shall be a sum equal to the New Withholding Tax Revenue calculated pursuant to Section 5.2 of this Amended Agreement minus the

Old Withholding Tax Revenue calculated pursuant to Section 5.1 of this Amended Agreement.

**5.6 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 4.5 of this Amended Agreement, shall calculate the Real Estate Tax Increment, which shall be a sum equal to the New Real Estate Tax Revenue calculated pursuant to Section 5.3 of this Amended Agreement minus the Old Real Estate Tax Revenue calculated pursuant to Section 5.1 of this Amended Agreement.

**5.7 Calculation of Transient Room Tax Increment.** The Office of Management and Budget in each year following the Activation Date, prior to the Time of Payment pursuant to Section 4.5 of this Amended Agreement, shall calculate Transient Room Tax Increment which shall be a sum equal to the New Transient Room Tax Revenue calculated pursuant to Section 5.4 of this Amended Agreement minus the Old Transient Room Tax Revenue calculated pursuant to Section 5.1 of this Amended Agreement.

**5.8 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 4.5 of this Amended Agreement, shall calculate the Released Amount, which shall be a sum equal to: (i) ninety percent (90%) of the Withholding Tax Increment and the Real Estate Tax Increment and (ii) eighty (80%) of the Transient Room Tax Revenue provided that said amount does not exceed a base amount of \$400,000 in the first year after the Activation Date, which base amount shall be increased in each subsequent year of the term of this Amended Agreement by four percent (4%).

**Section 6. Pledge of Incremental Revenues Superior to Ordinances and Statutes.**

As provided in the Act, any pledge of the Released Amount in this Amended 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 7. Miscellaneous.**

**7.1 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 Economic Development Department 444 S. 5 <sup>th</sup> St., Ste. 600 Louisville, Kentucky 40202
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Attn: E. Jeffrey Mosley

If to the Authority: Metro Development Authority, Inc.  
444 S. 5<sup>th</sup> St., Ste. 600  
Louisville, Kentucky 40202  
Attn: Mary Ellen Wiederwohl

## **Section 8. Default.**

**8.1 Default by the Authority.** If the Authority materially breaches or defaults on its obligations under this Amended 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 Amended 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 be entitled to any remedy and damages available to it at law or in equity, including specific performance.

**8.2 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 Amended Agreement.

**8.3 Exception.** In the event of any default or termination by either party, the non-defaulting party shall be relieved of any executory obligations hereunder. Provided however, that in the event the Authority has issued bonds for the benefit of the New Project which are secured by a pledge of the Released Amount, Louisville shall not terminate the payment of the Released Amount for the period said bonds remain outstanding and the Authority shall continue to comply with all applicable provisions of this Amended Agreement necessary to make the bond payments with all applicable Released Amounts. Neither the Authority nor Louisville will terminate or otherwise negatively impact any such pledge, and both parties shall fully cooperate to use the Released Amount to service such bonds.

**Section 9. Miscellaneous Provisions.**

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

**9.2 Severability.** If any clause, provision, or section of this Amended 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.

**9.3 Governing Law.** This Amended Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and enforceable in courts of competent jurisdiction.

**9.4 Entire Agreement; Modifications.** This Amended Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter of this Amended Agreement. This Amended Agreement shall not be modified, amended, cancelled or terminated except by an agreement in writing signed by the parties hereto.

**9.5 Counterparts.** This Amended 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.

**9.6 Relationship of the Parties.** Except as expressly stated and provided for herein, neither anything contained in this Amended 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 Amended Agreement.

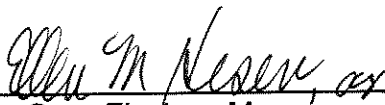
**9.7 Further Assurances.** Each of the parties hereto shall use reasonable efforts and cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Amended Agreement.

**9.8 Mutual Termination.** In addition to any other provisions relating to termination of this Amended Agreement contained herein, this Amended 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 Amended Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

**[Remainder of Page Intentionally Left Blank]**

**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