

LOCAL PARTICIPATION AGREEMENT
FOR
THE SUMMIT LEXINGTON DEVELOPMENT AREA
BY AND AMONG
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
A Kentucky Urban County Government
AND
DEPARTMENT OF FINANCE AND ADMINISTRATION FOR
THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AND
BAYER PROPERTIES, LLC
August 13, 2013

- Exhibit A – The Development Area, including legal description**
- Exhibit B – The Project, including an estimate of costs of construction, acquisition and development**
- Exhibit C – The Elements of the Project to be supported with Incremental Revenues**
- Exhibit D – The Plan for Financing the Project**
- Exhibit E – Listing of Old Revenues Collected from Development Area**
- Exhibit F – Listing of Anticipated Incremental Revenues for the LFUCG**

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TO
LOCAL PARTICIPATION AGREEMENT
DATED
August 13, 2013
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AND
DEPARTMENT OF FINANCE AND ADMINISTRATION FOR THE LEXINGTON-
FAYETTE URBAN COUNTY GOVERNMENT
AND
BAYER PROPERTIES, LLC

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LOCAL PARTICIPATION AGREEMENT
Summit Lexington Development Area

THIS LOCAL PARTICIPATION AGREEMENT (this "Agreement") is made as of the 13th day of August, 2013 (the "Effective Date") by and among the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, a Kentucky urban county government (the "LFUCG"), and the DEPARTMENT OF FINANCE AND ADMINISTRATION OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (the "Agency") and BAYER PROPERTIES, LLC, a Delaware limited liability company authorized to do business in Kentucky (the "Developer");, collectively (the "Parties");

RECITALS

WHEREAS, pursuant to the Act, as hereinafter defined, the LFUCG has on the 26th day of September, 2013, adopted Ordinance Number 116-2013, (the "Development Area Ordinance"), whereby it established The Summit Lexington Development Area (the "Development Area") for the purpose of promoting a mixed-use development of previously undeveloped land; and

WHEREAS, the Council of the LFUCG recognize and determine individually that the real property that constitutes the Development Area has been and is currently characterized by underutilized land, that continuation of the underutilized status of this land within the Development Area will discourage and interfere with the Urban-County's' growth policies to encourage the sensible development of land within the existing Urban Service Area , and that the acquisition, financing, construction and development of those improvements and buildings, as identified in Exhibit B herein (collectively, the "Project"), will contribute to the public welfare of the citizens of the Urban- County, and the Commonwealth of Kentucky (the "State") and will thereby materially enhance the

area and be in furtherance of the general health and welfare of the citizens of the Urban- County and the State; and

WHEREAS, the Council of the LFUCG recognizes and determines individually that the project is a mixed-use development which includes both significant public storm water and sanitary sewer facilities designed to comply with a community-wide court decree mandating corrective action by the local government; and

WHEREAS, the Parties recognize that the development of the Development Area, will not likely occur without a public-private partnership and financial assistance provided to the Project by the LFUCG and the State; and

WHEREAS, the Parties desire to set forth the duties and responsibilities of the Parties with respect to the administration, financing and pledging of Incremental Revenues in support of the development of the Project within the Development Area; and

WHEREAS, pursuant to the Development Area Ordinance, the Council of the LFUCG has authorized the Mayor to execute and enter into this Agreement with the Agency and Developer, and the LFUCG desires to enter into this Agreement; and

WHEREAS, pursuant to the Development Area Ordinance, the Council of the LFUCG has authorized the Commissioner of Finance to execute and enter into this Agreement with the LFUCG and Developer, and the Agency desires to enter into this Agreement; and

WHEREAS, pursuant to a resolution approved by the Developer, the Developer has authorized its managing member to execute and enter this Agreement with the LFUCG and the Agency, and the Developer desires to enter into this Agreement; and

WHEREAS, pursuant to the Act (as hereinafter defined), the LFUCG, the Agency and Developer desire to set forth their mutual agreements, understandings and obligations in this Local Participation Agreement, in order to facilitate development of the Project within the Development Area.

STATEMENT OF AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, and in consideration of the premises and the mutual covenants and undertakings contained herein, it is agreed and covenanted by and among the Parties hereto as follows:

SECTION I Recitals

The Parties hereto agree that the above "recitals" or "recital clauses" are incorporated herein by reference as if fully restated herein and form a part of the agreement among the Parties hereto.

SECTION II Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

1. "Act" or "the Act". Shall mean KRS 65.7041 to KRS 65.7083, KRS 154.30-010-154.30-090 and KRS 139.515.
2. "Agreement". Shall mean this Local Participation Agreement, including all Exhibits attached hereto.
3. "Approved Costs". Shall be that part of the Project Costs designated as approved for reimbursement by KEDFA from State Incremental Revenues as approved

public infrastructure costs and land preparation costs in the Tax Incentive Agreement and certified to the Agency as being expended by the Developer as required by Section VI of this Agreement.

4. "Developer" or "Master Developer". Shall mean Bayer Properties, LLC, its affiliates, subsidiaries or related entities.

5. "Development Area". Shall have the meaning given in the Recitals to this Agreement.

6. "Development Area Ordinance." Shall mean Ordinance No. 116-2013, adopted by the LFUCG on September 26, 2013.

7. "Effective Date". Shall have the meaning given in the introductory paragraph of this Agreement.

8. "Eligible Public Infrastructure Costs". Shall mean that part of the Project Costs which would qualify as Approved Public Infrastructure Costs under KRS 154.30-010 and certified as being expended by the Developer as required in Section VI of this Agreement.

9. "Financing Plan". Shall mean the plan for financing the Project as described in Section XI of this Agreement and in Exhibit D attached hereto, as it may be amended with the approval of the of the LFUCG.

10. "Incremental Revenues". Shall mean the amount of revenues received by the LFUCG with respect to the Development Area and the State with respect to the Footprint (as defined in the Act) by subtracting Old Revenues (as defined in the Act) from New Revenues (as defined in the Act) in a calendar year; provided, however, that the calculation of Old Revenues and New Revenues from the LFUCG real property *ad*

valorem taxes shall not include any amounts designated by the LFUCG for the Lexington Public Library District.

11. "KEDFA". Shall mean the Kentucky Economic Development Finance Authority.

12. "LFUCG". Shall mean the Lexington-Fayette Urban County Government, a Kentucky urban county government organized under the provisions of Chapter 67A of the Kentucky Revised Statutes.

13. "LFUCG Authorizations". Shall mean those necessary governmental authorizations, resolutions, orders, hearings, notices, ordinances, and other acts, required by laws, rules, or regulations to provide the LFUCG and its officers with the proper authority to perform all obligations of the LFUCG resulting from this Agreement, and perform all other obligations of the LFUCG made necessary by, or resulting from the establishment of the Development Area.

14. "Mixed-Use Project or Program". Shall mean the Commonwealth Participation Program for Mixed-Use Redevelopment in Blighted Urban Area as described in the Act.

15. "New Revenues". Shall have the meaning as provided in the Act.

16. "Old Revenues". Shall have the meaning as provided in the Act.

17. "Project". Shall mean the comprehensive development described in Exhibit B, attached hereto, within the Development Area, more specifically described in Exhibit A, attached hereto.

18. "Project Costs". Shall mean any capital investment as defined in the Act incurred by the Developer to construct the Project.

19. "Project Financing". Shall mean the private financing obtained by the Developer to construct the Project.

20. "Special Fund". Shall mean The Summit Lexington Development Area Special Fund established in the Development Area Ordinance and maintained by the Agency, for the purpose of holding the LFUCG's and the State Incremental Revenues pledged herein or by the Tax Incentive Agreement in connection with the development of the Project.

21. "State". Shall mean the Commonwealth of Kentucky, including any of its agencies and departments.

22. "Tax Incentive Agreement". Shall mean the anticipated agreement between KEDFA and the Agency related to the pledge of State Incremental Revenues to pay for approved public infrastructure costs and land preparation costs in connection with the construction of the Project.

23. "Unavoidable Delays". Shall mean delays due to labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, governmental regulations not in effect at the date of execution of this Agreement, conditions that could not have been reasonably foreseen by the claiming party, inability to obtain construction materials or energy, fire, or unavoidable casualty, provided such matters are beyond the reasonable control of the party claiming such delay.

SECTION III Parties

The parties to this Agreement shall be the LFUCG, the Agency, and the Developer.

SECTION IV
Duties and Responsibilities of LFUCG

The LFUCG shall have the following duties and responsibilities in connection with the development of the Development Area:

1. Provide for the establishment of the LFUCG Special Fund for the collection of Incremental Revenues pledged herein from LFUCG real *ad valorem* taxes and occupational taxes (consisting of business occupational taxes and payroll taxes), within the Development Area from the Project.
2. Pledge eighty percent (80%) of the LFUCG's Incremental Revenues from LFUCG real property ad valorem taxes and occupational taxes (consisting of business occupational taxes and payroll taxes) generated within the Development Area to support the cost of Eligible Public Infrastructure Costs, which pledge is made in Section VII herein. A list of the anticipated projects to be funded with the Incremental Revenues pledged herein is attached as Exhibit "C".
3. Make, in participation with the Agency and the Developer, application to the KEDFA requesting State participation under the "Mixed-Use Program" in accordance with applicable provisions of the Act. The application shall request State participation, as provided in the Financing Plan.
4. Designate the Agency as the entity responsible for the oversight, administration, and implementation of the Development Area Ordinance.
5. Meet as necessary with the Developer and the Agency for the purpose of reviewing the progress of the development of the Development Area and prepare an analysis of such progress for distribution to the Agency and the State in accordance with the Act.

6. Require its Department of Finance and Administration, as the “Agency” for purposes of the Act, to prepare by no later than July 1 of each year during the term of this Agreement an annual report and provide same to the LFUCG and KEDFA including, but not limited to: (a) the total real property taxes, business occupational license taxes and business employee payroll taxes collected within the Development Area during the previous calendar year; (b) a determination of New Revenues collected within the Development Area during the previous calendar year; and (c) the amount , if any, of Incremental Revenues spent from the Special Fund on Eligible Public Infrastructure Costs and/or Approved Costs in connection with the Project.

7. Upon Developer’s request provide, or require the Agency to provide, written confirmation that the Developer is in good standing with its obligations under the terms of this Agreement.

SECTION V
Duties and Responsibilities of the Agency

The Agency shall have the following duties and responsibilities in connection with the development of the Development Area:

1. Act as the entity responsible for the oversight, administration, and implementation of the Development Area Ordinance.

2. Participate with the LFUCG and Developer in the application to KEDFA, requesting State participation under the “Mixed-Use Program” in accordance with the applicable provisions of the Act. The application shall request State participation, as provided in the Financing Plan.

3. Meet as necessary with the Developer and the LFUCG for the purpose of reviewing the progress of the development of the Development Area and prepare an

analysis of such progress for distribution to the Agency and the State in accordance with the Act.

4. Prepare by no later than July 1 of each year during the term of this Agreement an annual report and provide same to the LFUCG, the Developer and KEDFA including, but not limited to: (a) the total real property taxes, business occupational license taxes and business employee payroll taxes collected within the Development Area during the previous calendar year; (b) a determination of New Revenues collected within the Development Area during the previous calendar year; and (c) the amount, if any, of Incremental Revenues spent from the Special Fund on Eligible Public Infrastructure Costs and/or Approved Costs in connection with the Project.

5. Comply with any requirements and carry out any duties and responsibilities as the Agency under the terms of a Tax Incentive Agreement with KEDFA and this Agreement.

SECTION VI
Duties and Obligations of the Developer

1. The Developer shall undertake and construct the Project within the Development Area, subject to any required permits or other approvals from LFUCG or other agency. The Project shall be constructed in substantial conformity (in relation to capital investment and scope) to the Project described in the Development Plan for the Development Area.

2. The Developer shall be solely responsible for obtaining Project Financing for the Project, and neither LFUCG nor the Agency shall have any responsibility or liability for the Project Financing other than reimbursing the Developer for Eligible Public

Infrastructure Costs and/or Approved Costs with Incremental Revenues as provided in this Agreement.

3. The Developer shall meet as necessary with the LFUCG and the Agency for the purpose of reviewing the progress of the development of the Development Area.

4. The developer shall annually provide to the Agency a detailed listing of any capital costs incurred on the Project, including a detailed accounting of capital investment representing Eligible Public Infrastructure Costs and Approved Costs. The Developer shall cooperate with the Agency with any required reports or information required to be provided to maintain compliance with the Tax Incentive Agreement.

5. It is understood by the Parties that a Development Agreement may need to be negotiated among the Parties to incorporate the provisions of this Agreement, the duties and obligations of the Parties, time schedule for the Project, and other matters relating to the construction of the Project not fully provided for herein.

SECTION VII Identification and Pledge of Incremental Revenues

1. The LFUCG hereby pledges eighty percent (80%) of the LFUCG's Incremental Revenues, from LFUCG real property *ad valorem* taxes and occupational taxes (consisting of business occupational taxes and payroll taxes) generated within the Development Area from the Project to reimburse the Developer for Eligible Public Infrastructure Costs expended by the Developer related to the development of the Project as provided in the approved Financing Plan as Incremental Revenues are generated, for up to a twenty (20) year period after Activation of the Development Area as provided in Section XII of this Agreement; provided, however, that the pledge of LFUCG Incremental Revenues shall be conditioned upon the approval of State

participation as a "Mixed-Use Project" as provided in the Act. The Incremental Revenues shall be determined by calculating the New Revenues collected from the Development Area, and subtracting the Old Revenues collected from within the Development Area for the base year, which is the calendar year 2012. A listing of the Old Revenues collected by the LFUCG from within the Development Area is attached hereto as Exhibit E.

2. Incremental Revenues pledged by the LFUCG in this Section shall be deposited at least annually, no later than each July 1st after the first calendar year of activation, to the Special Fund and shall be held by the Agency and used solely to reimburse the Developer for Eligible Public Infrastructure Costs expended by the Developer (and certified to the Agency as required by Section VI of this Agreement) and for no other purpose.

3. State Incremental revenues received by the Agency pursuant to the Tax Incentive Agreement shall be deposited in the Special Fund and used solely to reimburse the Developer for Approved Costs as provided in the Tax Incentive Agreement and for no other purpose.

4. The Agency shall within sixty (60) days of receipt of Incremental Revenues from LFUCG or the State annually pay such funds to the Developer to reimburse Developer for Eligible Public Infrastructure Costs and/or Approved Costs.

5. The Special Fund shall be continued and maintained until the Termination Date (as defined in the Development Area Ordinance) of the Development Area. Amounts in the Special Fund, together with interest accruing thereon, are hereby irrevocably pledged to pay for Eligible Public Infrastructure Costs and/or Approved

Costs related to the development of the Project as provided in the approved Financing Plan.

6. The pledge of Incremental Revenues as provided in this Agreement is contingent upon approval of the Project as a Mixed-Use Project and the granting of a Tax Incentive Agreement by KEDFA, In the event the Project does not achieve the minimum capital investment to allow for a release of State Incremental Revenues to the Agency as provided in the Tax Incentive Agreement, or should the Tax Incentive Agreement, after its execution, be terminated by KEDFA due to a failure of the Developer to construct the Project as proposed, or within the timeframes set forth in the Tax Incentive Agreement, this Agreement, and the obligation to reimburse the Developer for Eligible Public Infrastructure Costs and/or Approved Costs, may be terminated by LFUCG and the Agency.

7. At the Termination Date (as defined in the Development Area Ordinance), or after reimbursing the Developer for all Eligible Public Infrastructure Costs and/or Approved Costs, whichever first occurs, any funds remaining in the Special Fund shall be transferred to the General Fund of the LFUCG.

IT IS UNDERSTOOD BY THE PARTIES THAT LFUCG OR THE AGENCY SHALL HAVE NO OBLIGATION OR LIABILITY TO PAY FOR PROJECT COSTS OR PROJECT FINANCING, EXCEPT FOR THE PLEDGE OF INCREMENTAL REVENUES THAT MIGHT BE GENERATED OR RECEIVED FROM THE DEVELOPMENT AREA AS A RESULT OF THE PROJECT, AND ANY PROJECT FINANCING OBTAINED BY THE DEVELOPER SHALL NOT CONSTITUTE A DEBT OF THE LFUCG OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE

LFUCG, AND LFUCG OR THE AGENCY SHALL HAVE NO OBLIGATION TOWARD THE PAYMENT OF PROJECT FINANCING OR PROJECT COSTS BEYOND THE PLEDGE OF INCREMENTAL REVENUES AS PROVIDED IN THIS AGREEMENT.

SECTION VIII
Anticipated Benefits to the LFUCG

The LFUCG anticipates receiving substantial benefits as a result of the pledge of their Incremental Revenues to support development of the Development Area as set forth herein. Detailed summaries of Old Revenues are attached as Exhibit E and projected New Revenues for the LFUCG on an annual basis during the term of this Agreement are attached as Exhibit F hereto. The maximum amount of Incremental Revenues to be paid by the LFUCG shall be eighty percent (80%) of the Incremental Revenues generated from the Development Area, and the maximum number of years the payment of Incremental Revenues to support the development of the Development Area will be made is twenty (20) years.

SECTION IX
Description of Development Area

A detailed description of the Development Area is set forth in Exhibit A hereto.

SECTION X
Description of Project; Costs

A detailed description of the individual projects that collectively constitute the Project is set forth in Exhibit B hereto. Also included in Exhibit B is an estimate of the costs of construction, acquisition and development of such proposed projects. The elements of the Project planned to be supported or paid for with Incremental Revenues are listed on the attached Exhibit C, subject to further amendment with approval by the LFUCG.

SECTION XI
Financing Plan

The financing for the Project shall generally be in accordance with the Financing Plan set forth in Exhibit D attached hereto. It is understood that the Financing Plan for the Project may be modified as development of the Project progresses.

SECTION XII
Commencement Date; Activation Date; Termination Date

This Agreement shall commence and be effective as of the date of execution hereof by the LFUCG. The activation date for the pledge of Incremental Revenues as set forth in Section VII hereof shall be determined by the LFUCG and Developer in accordance with the Act. This Agreement shall terminate twenty (20) years after the activation date as set forth above. This Agreement shall not terminate upon the execution of any deeds or other agreements required or contemplated by this Agreement, or referred to herein, and the provisions of this Agreement shall not be deemed to be merged into the deeds, or any other such deeds or other agreements, it being the intent of the parties hereto that this Agreement shall survive the execution and delivery of any such agreements.

SECTION XIII
Default

If the LFUCG or the Agency (a "Defaulting Party") shall default in its obligation to make payments of Incremental Revenues set forth herein, the Agency (unless it is the Defaulting Party), the Developer and/or the indenture trustee or trustees for outstanding financing obligations secured by such Incremental Revenues shall have the power to enforce the provisions of this Agreement against the Defaulting Party. If the LFUCG or the Agency materially breaches or defaults on any of its nonpayment related obligations

under this Agreement, the Developer, and/or the indenture trustee or trustees for the outstanding financing obligations may give notice that remedial action must be taken within thirty (30) days. The Defaulting Party shall correct such breach or default within thirty (30) days after such notice, provided however that if (i) the default is one which cannot with due diligence be remedied by the Defaulting Party within thirty (30) days and (ii) the Defaulting Party proceeds as promptly as reasonably possible after such notice and with all due diligence to remedy such default, the period after such notice within which to remedy the default shall be extended for such period of time as may be necessary to remedy the same with all due diligence.

SECTION XIV
Governing Law

The laws of the State shall govern as to the interpretation, validity and effect of this Agreement.

SECTION XV
Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties essential objectives as expressed herein.

SECTION XVI
Force Majeure

The LFUCG shall not be deemed to be in default in the performance of any obligation on such parties' part to be performed under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non performance of such obligation shall be directly caused by Unavoidable Delays; provided, that within fifteen (15) days after the commencement of such Unavoidable Delay, the non performing party shall notify the other party in writing of the existence and nature of any such Unavoidable Delay and the steps, if any, which the non-performing party shall have taken or planned to take to eliminate such Unavoidable Delay. Thereafter, the non-performing party shall, from time to time, on written request of the other party, keep the other party fully informed, in writing, of further developments concerning such Unavoidable Delay and the effort being made by the non-performing party to perform such obligation as to which it is in default. All provisions of any construction schedule shall be adjusted in accordance with such Unavoidable Delay.

SECTION XVII
Notices

Any notice to be given under this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earliest of (i) three (3) days following deposit in the U.S. Mail with proper postage prepaid, Certified or Registered, (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) receipt of notice given by telecopy or personal delivery:

If to the LFUCG: Mayor Jim Gray
200 East Main Street
Lexington, Kentucky 40507

With a Copy to: Janet M. Graham
200 East Main Street
Lexington, Kentucky 40507

If to the Agency: William O'Mara
200 East Main Street
Lexington, Kentucky 40507

If to the Developer: David Silverstein
Bayer Properties, LLC
2222 Arlington Avenue
Birmingham, AL 35205

With a Copy to: Christine N. Westover
McBrayer McGinnis Leslie & Kirkland
201 E. Main Street, Ste. 1000
Lexington, KY 40507

SECTION XVIII
Approvals

Whenever a party to this Agreement is required to consent to, or approve, an action by the other party, or to approve any such action to be taken by another party, unless the context clearly specifies a contrary intention, or a specific time limitation, such approval or consent shall be given within thirty (30) business days and shall not be unreasonably withheld or delayed by the party from whom such approval or consent is required.

SECTION XIX
Entirety of Agreement

As used herein, the term "Agreement" shall mean this Local Participation Agreement and the Exhibits attached hereto. This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements,

and understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party which has not been embodied in this Agreement, and no party shall be bound by or be liable for any alleged representation, promise, inducement, or statement of intention not so set forth. This Agreement may be amended, modified, superseded, or cancelled only by a written instrument signed by all of the parties hereto, and any of the terms, provisions, and conditions hereof may be waived only by a written instrument signed by the waiving party. Failure of any party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of any such provision by any part.

SECTION XX
Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

SECTION XXI
Headings and Index

The headings in this Agreement and the Index are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof.

SECTION XXII
Exhibits

All exhibits to this Agreement shall be deemed to be incorporated herein by reference and made a part hereof, above the signatures of the parties hereto, as if set out in full herein.

SECTION XXIII

No Waiver

No waiver of any condition or covenant of this Agreement to be satisfied or performed by the LFUCG shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of either party, except a written waiver signed by such party, shall be construed to be a waiver of any condition or covenant to be performed by the other party.

Construction

No provisions of this Agreement shall be construed against a party by reason of such party having drafted such provisions.

SECTION XXIV

Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall constitute an original document.

SECTION XXV

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.

SECTION XXVI

No Third Party Beneficiary

Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the LFUCG, the Agency, and the Developer, their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this

Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

SECTION XXVII
Diligent Performance

With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of the performance thereof. Notwithstanding the above, time is of the essence with respect to any time limit specified herein.

SECTION XXVIII
Assignment of Rights and Delegation of Duties


No Party to this Agreement may assign this Agreement, or any part hereof, except as provided herein, without the prior written consent of the other Parties, except that the Developer may assign its rights to receive reimbursement for Eligible Public Infrastructure Costs to a financial institution that provides Project Financing. Nothing in this Section shall be construed to require prior written consent for the Developer to assign any of its rights or obligations under this Agreement to a subsidiary, affiliate or related entity.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

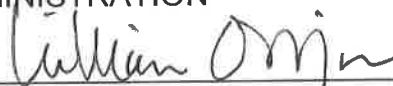
LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT
a Kentucky urban county government

By: 
Jim Gray
Its: Mayor

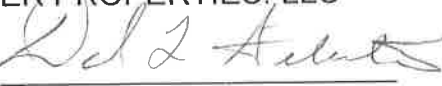
Approval as to Form:


Janet M. Graham
Commissioner of Law for the
Lexington-Fayette Urban County
Government

DEPARTMENT OF FINANCE AND
ADMINISTRATION

By: 
William O'Mara
Its: Commissioner of Finance and Administration

BAYER PROPERTIES, LLC

By: 
David Silverstein
Its: Principal

EXHIBITS

Exhibit A: Development Area Map and Description

Exhibit B: The Project

Exhibit C: Elements of Project to be Financed with Incremental Revenues

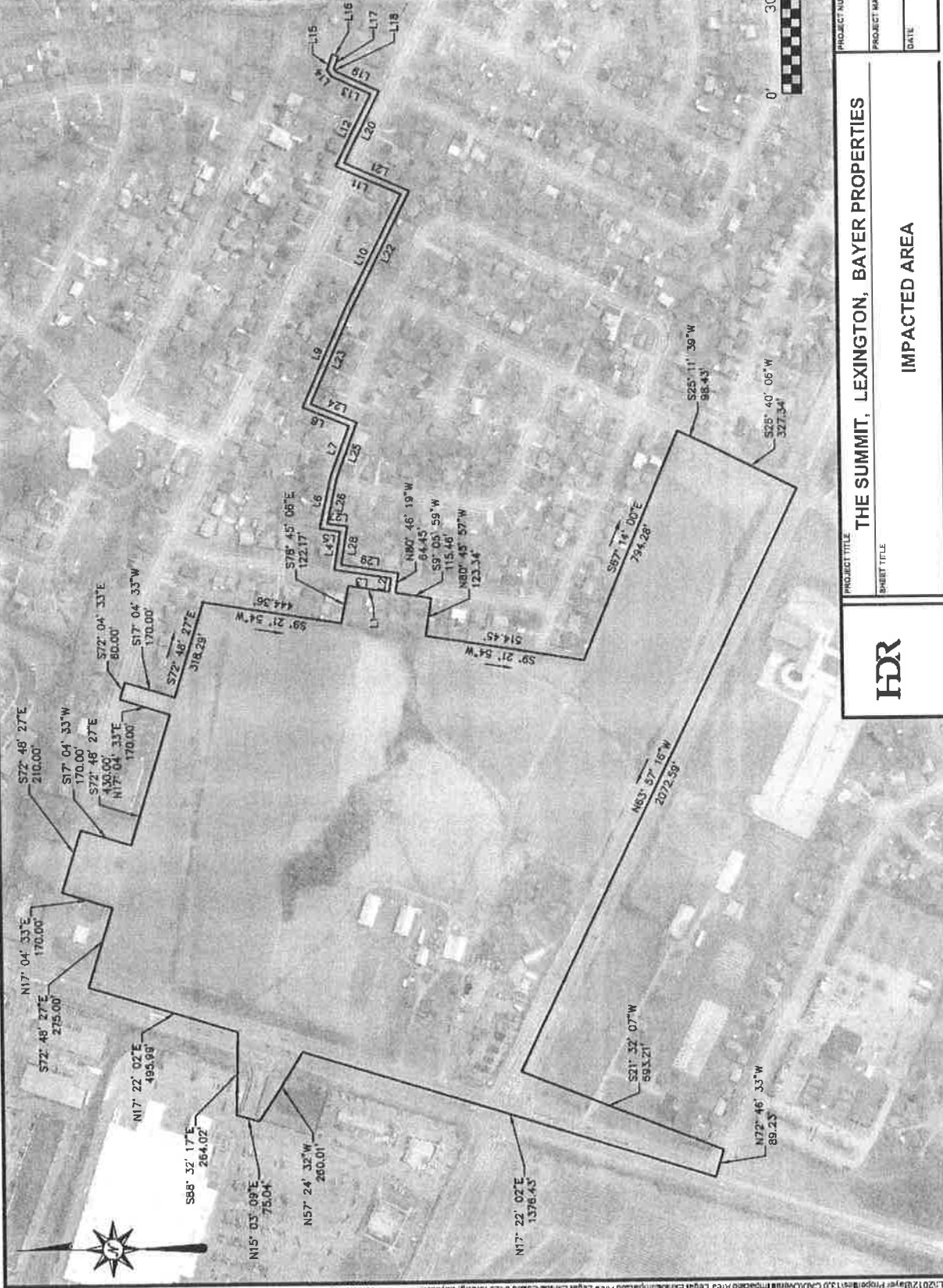
Exhibit D: Financing Plan

Exhibit E: Listing of Old Revenues Collected by the LFUCG from Development Area

Exhibit F: Listing of Anticipated Incremental Revenues for the LFUCG

Exhibit A: Development Area Map and Description

Line #	Length	Direction
L1	131.22'	S8° 05' 39"W
L2	44.48'	S80° 46' 19"E
L3	182.22'	N8° 11' 05"E
L4	133.55'	S80° 39' 14"E
L5	65.27'	N8° 42' 10"E
L6	172.82'	S77° 35' 01"E
L7	171.10'	S69° 32' 01"E
L8	159.33'	N22° 39' 29"E
L9	353.72'	S66° 08' 02"E
L10	398.74'	S85° 38' 28"E
L11	224.48'	N24° 06' 22"E
L12	256.28'	S63° 50' 02"E
L13	134.66'	N25° 08' 32"E
L14	25.66'	N52° 41' 46"E
L15	53.38'	S70° 45' 10"E
L16	20.00'	S18° 14' 50"W
L17	42.60'	N70° 45' 10"W
L18	9.94'	S52° 41' 48"W
L19	150.11'	S25° 08' 52"W
L20	255.91'	N63° 50' 02"W
L21	224.58'	S24° 06' 22"W
L22	419.10'	N63° 38' 13"W
L23	332.66'	N65° 08' 00"W
L24	156.15'	S22° 38' 25"W
L25	188.95'	N8° 32' 01"W
L26	150.07'	N77° 35' 01"W
L27	84.15'	S8° 42' 10"W
L28	123.72'	N80° 38' 14"W
L29	182.18'	S8° 11' 05"W



HDR

PROJECT TITLE
THE SUMMIT, LEXINGTON, BAYER PROPERTIES

SHEET TITLE
IMPACTED AREA

PROJECT NUMBER

PROJECT MANAGER

DATE

REFERENCE SHEET

REFERENCE DOCUMENT

EXHIBIT NUMBER

Legal Description of the TIF Boundary

Beginning at a point in the centerline of Nicholasville Road approximately 170' south of the intersection of the centerline of Nicholasville Road and East Tiverton Way. Thence leaving the centerline of Nicholasville Road (US Hwy No. 27) $S72^{\circ}48'27''E$ a distance of 75.00 feet to a point in the east right of way line of Nicholasville Road and being the northwest corner of the Fritz property and the southwest corner of Devondale Subdivision, Unit 1-A, Plat Cabinet C Slide 774. Thence in an easterly direction with the north property line of the Fritz property and the south boundary of Devondale Subdivision Unit 1-A $S72^{\circ}48'27''E$ a distance of 275.00 feet to a point in the boundary between the Fritz property and Devondale Subdivision, Unit 1-A, corner to lots 1 and 2 of said Devondale Subdivision, Unit 1-A. Thence leaving the Fritz property boundary and following the property line between Lot 1 and Lot 2, $N17^{\circ}04'33''E$ a distance of 135.00 feet to a point being the corner between Lot 1 and Lot 2 in the south right of way of East Tiverton Way. Thence leaving the south right of way of East Tiverton Drive in a northerly direction $N17^{\circ}04'33''E$ a distance of 35.00 feet to the centerline of East Tiverton Drive. Thence with the centerline of East Tiverton Way $S72^{\circ}48'27''E$ (S $73^{\circ}38'$ E by plat) a distance of 210.00 feet to a point. Thence leaving the centerline of East Tiverton Way $S17^{\circ}04'33''W$ (S $16^{\circ}15'$ W by plat) a distance of 35.00 feet to a point in the southerly right of way line of East Tiverton Way and being the property corner between Lot 4 and Lot 5, Block B, Unit 1-A, Devondale Subdivision, Plat Cabinet C Slide 774. Thence leaving the southerly right of way line of East Tiverton Way with the boundary between Lots 4 and 5, $S17^{\circ}04'33''W$ a distance of 135.00 feet to a point in the north boundary of the Fritz property and being the property corner between Lots 4 and 5. Thence with the north property line of the Fritz property and the south boundary of Devondale Subdivision Unit 1-A $S72^{\circ}48'27''E$ a distance of 430.00 feet to a point in the west right-of-way of Tavistock Drive. Thence with the west right-of-way of Tavistock Drive and continuing to the centerline of East Tiverton Way $N17^{\circ}04'33''E$ a distance of 170.00 feet. Thence with the centerline of East Tiverton Way $S72^{\circ}04'33''E$ a distance of 60.00 feet. Thence $S17^{\circ}04'33''W$ and continuing with the east right-of-way of Tavistock Drive a distance of 170.00 feet to a point in the north property boundary of the Fritz property and being the southwest corner of Lot 1, Block H of Devondale Subdivision Unit 1-A. Thence with the north property line of the Fritz property and the south boundary of Devondale Subdivision Unit 1-A $S72^{\circ}48'27''E$ a distance of 318.29 feet the northeast corner of the Fritz property, said point also being the northwest corner of Lot 6 of Unit 1-B of the Devondale Subdivision, Plat Cabinet C Slide 755; thence with the boundary of Unit 1-B of the Devondale Subdivision and the Fritz east property line $S9^{\circ}21'54''W$ a distance of 444.36 feet to a point in the Fritz property/Devondale Subdivision Unit 1-B property line and the approximate corner between lots 11 and 12 Block H, Unit 1-B of the Devondale Subdivision. Thence with the approximate line between lots 11 and 12, Block H, Unit 1-B of the Devondale Subdivision $S78^{\circ}45'06''E$ a distance of 122.17 feet to a point in the west right-of-way of Walhampton Drive. Thence with the west right-of-way of Walhampton Drive $S9^{\circ}05'59''W$ a distance of 131.22 feet to a point in the west right-of-way of Walhampton Drive.

Thence following the existing sanitary sewer easement through the Devondale Subdivision (across several Units of the Subdivision) for twenty nine(29) calls: S 80°46'19"E a distance of 44.48 feet to a point; N09°11'05"E a distance of 182.22 feet to a point; S80°39'14"E a distance of 123.55 feet to a point; N08°42'10"E a distance of 65.27 feet to a point; S77°35'01"E a distance of 172.82 feet to a point; S69°32'01"E a distance of 171.10 feet to a point; N22°39'29"E a distance of 159.33 feet to a point ; S66°08'00"E a distance of 353.72 feet to a point; S63°38'28"E a distance of 398.74 feet to a point; N24°06'22"E a distance of 224.48 feet to a point; S63°50'02"E a distance of 256.28 feet to a point; N25°08'52"E a distance of 134.66 feet to a point; N52°41'48"E a distance of 25.60 feet to a point; S70°45'10"E a distance of 53.36 feet to a point; S19°14'50"E a distance of 20.00 feet to a point; N70°45'10"W a distance of 42.60 feet to a point; S52°41'48"W a distance of 9.94 feet to a point; S25°08'52"W a distance of 150.11 feet to a point; N63°50'02"W a distance of 255.91 feet to a point; S24°06'22"W a distance of 224.58 feet to a point; N63°38'15"W a distance of 419.10 feet to a point; N66°08'00"W a distance of 332.86 feet to a point; S22°39'29"W a distance of 158.15 feet to a point; N69°32'01"W a distance of 188.95 feet to a point; N77°35'01"W a distance of 150.07 feet to a point; S08°42'10"W a distance of 64.15 feet to a point; N80°39'14"W a distance of 123.72 feet to a point; S09°11'05"W a distance of 182.18 feet to a point; N80°46'19"W a distance of 64.45 feet to a point in the west right-of-way of Walhampton Drive.

Thence with the west right-of-way of Walhampton Drive S09°05'59"W a distance of 115.46 feet to a point in the west right-of-way of Walhampton Drive being the approximate corner of lots 15 and 16, Block H, Unit 1-B of the Devondale Subdivision. Thence with the approximate line between lots 15 and 16, Block H, Unit 1-B of the Devondale Subdivision N80°45'57"W a distance of 123.34 feet to a point in the Fritz property east property line and being the approximate corner of lots 15 and 16, Block H, Unit 1-B of the Devondale Subdivision. Thence with the east property line of Fritz and the west property line of Devondale Subdivision Unit 1-B S09°21'54"W a distance of 514.45 feet to a point, said point being the southwest corner of lot 12, Block M, Unit 1-B of the Devondale Subdivision. Thence with the south line of Devondale Subdivision Unit 1-B S67°14'00"E a distance of 794.28 feet to the centerline of Habersham Drive. Thence with the centerline of Habersham Drive for two (2) calls: S25°11'39"W a distance 98.43 feet and S26°40'06"W a distance of 327.34 feet to the centerline of Man-o-War Blvd. Thence with the centerline of Man-o-War Blvd. N63°57'16"W a distance of 2,072.59 feet to a point on the centerline of Man-o-War Blvd. Thence leaving the centerline of Man-o-War Blvd. through the Fritz property S21°32'07"W a distance of 693.21 feet to a point in Toronto Road. Thence in a westerly direction N72°46'33"W a distance of 89.23 feet to a point in the centerline of Nicholasville Road (US Hwy. No. 27). Thence in a northerly direction with the centerline of Nicholasville Road (US Hwy. No. 27) N17°22'02"E a distance of 1,376.43 feet to a point on the centerline of Nicholasville Road. Thence through the lands of Walmart for three (3) calls: N57°24'32"W a distance of 260.01 feet to a point, N15°03'09"E a distance of 75.04 feet and S88°32'17"E a distance of 264.02 feet to a point in the centerline of Nicholasville Road (US Hwy. No. 27). Thence with the centerline of Nicholasville Road (US Hwy. No. 27) N17°22'02"E a distance of 495.99 feet to the Point of Beginning, containing approximately 60.29 Acres. This comprises the area impacted by the development for the purposes of the TIF submittal.

Exhibit B: The Project

EXHIBIT B

Project Description

Description of project location, components, and estimated cost

The Summit Lexington is a planned mixed-use development located at the intersection of Man O' War Blvd. and Nicholasville Rd. in Lexington, Kentucky. Framed by East Tiverton Way, Walhampton Drive, Tangleway Way, and Habersham Drive, the 48.56 acre, "P"-shaped property is settled between Nicholasville Rd., Man O' War Blvd, and residential communities. Except for a small mulch business, the land is currently undeveloped; it remains the only farmland plat on Nicholasville Road within Man O' War Blvd. The surrounding area is heavily trafficked, as Nicholasville Road serves as one of the main thoroughfares into town. Popular commercial centers, such as Fayette Mall, have made it a prime destination for retail.

The development will cover the majority of the property. With over 20 separate buildings, the mixed-use development merges retail and residential alongside a greenspace, "new urbanism" setting. In total, the development currently plans to add over 400,000 square feet of retail, 400 units of residential space, and nearly 2,500 parking spaces.

Overall, the proposed development will have the following components:

- Large, anchor retail structures (4), 25-40,000 square feet each
- Multi-use structures (4) along the main throughway, consisting of retail shops and restaurants on the first floor and multi-family residential complexes above
- Separate multi-family residential structures (4)
- Freestanding outparcels, used for retail (10+)
- Parking spaces throughout, including parking structures attached to two main, mixed-use buildings; estimated 2,477 spaces in total

Figure 1

The Summit Lexington Components	
Retail & Restaurants	401,500 Square Feet
Residential	400 Units
Parking	2,477 Spaces

The total estimated cost of the project is \$92.5 million. This includes an estimated private development cost of \$66.0 million and qualifying public infrastructure cost of \$26.5 million.

Exhibit C: Elements of Project to be Financed with Incremental Revenues

Public Infrastructure	Budget	Comments/Inclusions
Land Preparation and Demolition	\$4,270,246	Clearing, Demo, Grading, Retaining Walls and Site Prep
Sewers/Storm Drainage	\$2,982,843	Sanitary and Storm Sewer Systems
Curbs, Sidewalks, Promenades, and Pedways	\$2,970,448	Curbs, Sidewalks, Inlet Tops/Throats and Hardscape
Roads and Street Lighting	\$1,346,775	Site Lighting and Off-Site Infrastructure
Provision/Modification of Utilities	\$1,824,588	Water System & Power, Data, Phone, Cable and Meters
Environmental Remediation	\$738,426	Erosion Control, Laydown, Cleaning and Barricades
Public Spaces and Parks	\$1,134,000	Landscape and Irrigation
Parking	\$8,835,619	Public parking, including surface and structures
Public Infrastructure-related Soft Costs	\$2,410,295	Architecture, Engineering, Insurance, etc.
TOTAL	\$26,513,240	

Exhibit D: Financing Plan

EXHIBIT D

The Plan for Financing the Project

Description of development assistance

To provide funding support for the needed capital improvements set forth in the Development Plan and to provide support for the Project and provide development assistance, the Lexington-Fayette Urban County Government (LFUCG) plans to create the Summit Lexington Development Area pursuant to the provision of KRS 65.7041 to KRS 65.7083 and to utilize a portion of the new incremental revenues generated to support the financing of public infrastructure improvements.

The plan provides that the LFUCG will pledge 80% of the new incremental revenues, generated from the footprint of the Summit Lexington project, from real property taxes and occupational taxes over a 20-year period to pay for project costs and provide development assistance. It is understood that the local revenues from the footprint of the Project that were being generated from the area prior to the Project's development shall not be subject to any pledge of revenues to support the Project or provide development assistance.

In addition, the plan provides for the LFUCG to submit an application to the Kentucky Economic Development Finance Authority (KEDFA) to seek a pledge of 80% of new incremental state revenues from the footprint of the Project, to provide funding for approved public infrastructure costs.

Financing Plan

The Project is made up of both public and private components. The total cost of the project is estimated to be approximately \$92.5 million. This includes approximately \$66.0 million in private expenditures and \$26.5 million in qualifying public infrastructure costs.

Both the public infrastructure and private development costs of the project will be financed privately by the developer. There will be no bonds issued by a public entity to finance this project. The incremental revenues pledged in this agreement will be granted to the developer on a receipts basis, as outlined by KRS 154.30-090. Though no public entity will provide up-front financing assistance in the form of bonds, the pledge of these incremental revenues is critical to the affordability of financing the project.

The developer has discussed the proposed development with several lenders and underwriters and has received positive feedback on the financing of the proposed project costs. Until the structure of the deal is finalized – and the balance of public and private cost sharing delineated – it is too early at this time to detail the financing costs of the project. The developer has strong relationships with many of the country's leading lending institutions and is confident that there should be no difficulty in obtaining the financing for the project costs once the aforementioned public revenues are formally pledged.

Exhibit E: Listing of Old Revenues Collected by the LFUCG from Development Area

Exhibit E

Listing of Old Revenues Collected from Development Area

Property	PIDN	Fair Cash Value	Ag Land Value	Ag Total Value	Taxable Value
4100 Nicholasville Rd.	22250400	\$5,014,500	\$23,300	\$169,800	\$169,800

“Old Revenues” to LFUCG from real estate taxes shall be the 2012 assessed taxable value of real property within the Development Area of \$169,800, multiplied by the 2012 tax rate to LFUCG, not including any special district tax rates or the \$0.05 per hundred valuation allocated to the Library, of \$0.03 per each \$100 in taxable valuation, which is \$51.

“Old Revenues” to LFUCG from occupational taxes (net profits and payroll taxes) from the Development Area shall be based on the calendar year receipts to LFUCG for 2012 from the Development Area, which are \$100 from net profits taxes and \$2,648 from withholding taxes, for a total of \$2,748.

Exhibit F: Listing of Anticipated Incremental Revenues for the LFUCG

Figure 7

The Summit: Lexington Incremental Tax Revenues Generated for Project									
	Total	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 20	20-Year Total
Estimated Tax Revenues from Project									
State Tax Revenues	\$3,032,322	\$112,850	\$116,236	\$119,773	\$123,314	\$127,014	\$147,244	\$197,883	\$3,032,322
State Property Tax Revenues		\$4,396,500	\$4,528,395	\$4,664,247	\$4,804,174	\$4,948,299	\$5,736,435	\$7,709,289	\$118,135,601
State Sales and Use Tax Revenues		\$729,698	\$751,588	\$774,136	\$797,360	\$821,281	\$952,090	\$1,279,529	\$19,607,245
State Individual Income Tax		\$54,956	\$56,605	\$58,303	\$60,052	\$61,854	\$71,705	\$96,366	\$1,476,695
State Corporate Income Tax		\$5,294,004	\$5,452,824	\$5,616,409	\$5,784,901	\$5,958,448	\$6,907,474	\$9,283,068	\$142,251,863
Total State Tax Revenues		\$193,325	\$199,125	\$205,098	\$211,251	\$217,589	\$252,245	\$338,997	\$5,194,715
Local Property Tax Revenues	\$5,194,715	\$494,025	\$508,846	\$524,111	\$539,834	\$556,029	\$644,591	\$866,276	\$13,274,637
Local Occupational License Tax		\$687,350	\$707,971	\$729,210	\$751,086	\$773,618	\$896,836	\$1,205,272	\$18,469,352
Total Local Tax Revenues		\$5,981,354	\$6,160,794	\$6,345,618	\$6,535,987	\$6,732,066	\$7,804,310	\$10,488,340	\$160,721,215
"As-Is" Tax Revenues									
State Tax Revenues	\$5,733	\$213	\$220	\$226	\$233	\$240	\$278	\$374	\$5,733
State Property Tax Revenues	\$322,444	\$12,000	\$12,360	\$12,731	\$13,113	\$13,506	\$15,657	\$21,042	\$322,444
State Sales and Use Tax Revenues	\$112,856	\$4,200	\$4,326	\$4,456	\$4,589	\$4,727	\$5,480	\$7,365	\$112,856
State Individual Income Tax	\$441,033	\$16,413	\$16,906	\$17,413	\$17,935	\$18,473	\$21,416	\$28,781	\$441,033
Total "As-Is" Tax Revenues		\$366	\$376	\$388	\$399	\$411	\$477	\$641	\$9,822
Local Property Tax Revenues	\$9,822	\$4,000	\$4,120	\$4,244	\$4,371	\$4,502	\$5,219	\$7,014	\$107,481
Local Occupational License Tax	\$107,481	\$4,366	\$4,496	\$4,631	\$4,770	\$4,913	\$5,696	\$7,655	\$117,303
Total Local "As-Is" Tax Revenues	\$117,303	\$20,779	\$21,402	\$22,044	\$22,706	\$23,387	\$27,112	\$36,436	\$558,337
Total "As-Is" Tax Revenues		\$5,960,575	\$6,139,392	\$6,323,574	\$6,513,281	\$6,708,680	\$7,777,198	\$10,451,904	\$160,162,878
Estimated Incremental Tax Revenues									
(-) Retained by State	\$28,362,166	\$1,055,518	\$1,087,184	\$1,119,799	\$1,153,393	\$1,187,995	\$1,377,212	\$1,850,857	\$28,362,166
(-) Retained by Local	\$3,670,410	\$136,597	\$140,695	\$144,916	\$149,263	\$153,741	\$178,228	\$239,523	\$3,670,410
Net Incr. Tax Rev. Available from Project	\$128,130,303	\$4,768,460	\$4,911,514	\$5,058,859	\$5,210,625	\$5,366,944	\$6,221,759	\$8,361,523	\$128,130,303
Incr. Tax Rev. Available for State TIF Program	\$113,448,664	\$4,222,072	\$4,348,734	\$4,479,197	\$4,613,572	\$4,751,980	\$5,508,847	\$7,403,429	\$113,448,664
Incr. Tax Rev. Available for Local Participation	\$14,681,639	\$546,388	\$562,779	\$579,663	\$597,052	\$614,964	\$712,912	\$958,094	\$14,681,639