

ORDINANCE NO. _____

AN ORDINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT MAKING CERTAIN FINDINGS CONCERNING AND ESTABLISHING A DEVELOPMENT AREA FOR ECONOMIC DEVELOPMENT PURPOSES WITHIN OF THE LEXINGTON-FAYETTE URBAN COUNTY TO BE KNOWN AS THE SUMMIT LEXINGTON DEVELOPMENT AREA; APPROVING A LOCAL PARTICIPATION AGREEMENT AMONG LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, THE DEPARTMENT FINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, AND BAYER PROPERTIES, LLC (THE "DEVELOPER"); ESTABLISHING AN INCREMENTAL TAX SPECIAL FUND FOR PAYMENT OF APPROVED PUBLIC INFRASTRUCTURE COSTS AND LAND PREPARATION COSTS; DESIGNATING THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT'S DEPARTMENT OF FINANCE AS THE AGENCY RESPONSIBLE FOR OVERSIGHT, ADMINISTRATION, AND IMPLEMENTATION OF THE DEVELOPMENT AREA; AND AUTHORIZING THE MAYOR AND OTHER OFFICIALS TO TAKE SUCH OTHER APPROPRIATE ACTIONS AS ARE NECESSARY OR REQUIRED IN CONNECTION WITH THE ESTABLISHMENT OF THE DEVELOPMENT AREA.

WHEREAS, the Lexington-Fayette Urban County Government, an Urban County Government organized pursuant to Chapter 67A of the Kentucky Revised Statutes (the "LFUCG") by virtue of the laws of the Commonwealth of Kentucky (the "State"), Kentucky Revised Statutes, specifically Sections 65.7041 to 65.7083, as may be amended (the "Act"), is authorized to, among other things, (1) establish a development area to encourage reinvestment in and development and reuse of areas of the LFUCG, (2) enter into agreements in connection with the establishment and development of a development area, (3) establish a special fund for deposit of incremental revenues resulting from the development of a development area, and (4) designate an agency to oversee, administer and implement projects within a development area; and

WHEREAS, the LFUCG desires to establish a "development area" as defined in the Act to encourage investment and development within such development area and to pledge a portion of the "incremental revenues" as defined in the Act generated from the development of such development area to the payment of approved public infrastructure costs, land preparation costs, and/or financing costs within such development area; and

WHEREAS, the LFUCG has identified a contiguous tract of land of previously undeveloped land consisting of not more than three square miles within the LFUCG, specifically described in Exhibit A hereto, that is in need of being developed and which is not reasonably expected to be developed without public assistance; and

WHEREAS, Bayer Properties, LLC (the "Developer") has proposed the construction within the Development Area of a mixed-use project that meets the definition of a "Mixed-Use

Project in the Act, and that includes significant public storm water and sanitary sewer facilities designed to comply with a community-wide court decree mandating correction action by the LFUCG; and

WHEREAS, the LFUCG has determined to establish the Development Area as a development area pursuant to the Act to encourage investment and development within the Development Area; and

WHEREAS, the LFUCG has agreed to support and encourage development within the Development Area by pledging certain Incremental Revenues (hereinafter defined) to pay for Land Preparation Costs and Approved Public Infrastructure Costs (hereinafter defined), and more specifically set forth in the Local Participation Agreement (hereinafter defined); and

WHEREAS, the LFUCG has prepared and presented a "Development Plan", as defined in the Act, for the consideration and adoption of the LFUCG proposing the development of the Development Area; and

WHEREAS, the LFUCG pursuant to the Act held a public hearing on July 9, 2013 after giving proper notice concerning the LFUCG's intention to consider the adoption of the Development Plan; and

WHEREAS, the adoption of the Development Plan and the establishment of the Development Area are for a public purpose and that the establishment and creation of the Development Area within the LFUCG is for the benefit and welfare of the LFUCG's citizens; and

WHEREAS, the LFUCG deems it necessary to enact this Ordinance in accordance with the Act and for the purposes set forth and described herein and in the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AS FOLLOWS:

SECTION 1. Definitions.

1.1 The capitalized terms set forth below when used herein shall have the following meanings.

"Act" means Kentucky Revised Statutes, Sections 65.7041 to 65.7083 and KRS 154.30-010 to KRS 154.30-090.

"Agency" means the Department of Finance of the LFUCG.

"Approved Public Infrastructure Costs and Land Preparation Costs" shall be those Project costs eligible to be recovered by the Developer with Pledged Revenues as provided in the Tax Incentive Agreement and the Local Participation Agreement.

"Development Area" means a contiguous geographic area of undeveloped land, located within the geographical boundaries of the LFUCG, which is created for economic development purposes by this Ordinance in which one (1) or more Projects are proposed to be located and consisting of less than 3 square miles, as more specifically described in Exhibit A attached hereto, to be known as the "The Summit Lexington Development Area".

"Development Plan" means the Tax Increment Financing Development Plan for The Summit Lexington Development Area attached as Exhibit B.

"Establishment Date" means the date that the Development Area is established pursuant to the Act and this Ordinance.

"Incremental Revenues" means 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, less amounts designated by the LFUCG for the Lexington Public Library District.

"KEDFA" means the Kentucky Economic Development Finance Authority.

"Local Participation Agreement" shall mean the Local Participation Agreement between the LFUCG, the Agency and the Developer, attached as Exhibit C hereto.

"Mixed-Use Project or Program" means the Commonwealth Participation Program for Mixed-Use Redevelopment in Blighted Urban Areas as provided in the Act.

"Pledged Revenues" means that portion of the Incremental Revenues which are pledged by the LFUCG or State, pursuant to the Local Participation Agreement or the Tax Incentive Agreement, to the pay for Approved Public Infrastructure Costs and Land Preparation Costs as set forth in the Local Participation Agreement and Tax Incentive Agreement for the Development Area.

"Project" shall mean the proposed comprehensive redevelopment project within the Development Area more specifically described in the Development Plan.

"State" means the Commonwealth of Kentucky.

"Tax Incentive Agreement" shall mean the agreement entered into pursuant to KRS 154.30-010 to KRS 154.30-090 of the Act between the Kentucky Economic Development Finance Authority and the Agency, relating to the Development Area.

"The Summit Lexington Project" means a mixed-use development to be constructed by developer, Bayer Properties, LLC, as more specifically described in the Development Plan, and expected to fulfill the criteria for a "Mixed-Use Project" as defined herein.

1.2 All capitalized terms used herein and not defined above or in the recitals to this Ordinance shall have the meaning as set forth in the Act, as of the effective date of this Ordinance.

SECTION 2. Findings and Determinations. In accordance with the Act, the LFUCG hereby makes the following findings and determinations with respect to the Development Area:

- (a) The Development Area consists of a contiguous tract of land that is no more than three (3) square miles. The actual size of the Development Area is 60.29 acres;
- (b) The Development Area contains a mixed-use development project which includes significant public storm water and sanitary sewer facilities designed to comply with a consent decree entered in United States of America and the Commonwealth of Kentucky vs. Lexington-Fayette Urban County Government, Civil Action No. 5:06-CV-386, a community-wide court decree mandating corrective action by the LFUCG, as required by KRS 65.7049(3)(b)3;
- (c) The establishment of the Development Area will not cause the assessed taxable value of real property within the Development Area and within all "development areas" and "local development areas" established by the LFUCG (as those terms are defined in the Act) to exceed twenty percent (20%) of the total assessed taxable value of real property within Lexington. The assessed value of taxable real property within the Development Area for calendar year 2012 was \$5,014,500. The LFUCG has previously established five other development areas pursuant to the Act, the Phoenix Park/Courthouse Development Area, the Lexington Distillery District Development Area, the Red Mile Development Area, the Turfland Town Center Development Area and the 21C Lexington Development Area. The combined real property assessed valuation for those five development areas is approximately \$26,235,200 and when combined with the real property assessed value for proposed Development Area, the total real property assessed value for all development areas established by the LFUCG will be approximately \$31,249,700. The total assessed value of taxable real property within Lexington for the calendar year 2013 is approximately \$22,958,076,323. Therefore, the assessed value of taxable real property within all development areas is significantly less than twenty percent (20%) of the assessed value of taxable real property within Lexington;
- (d) There are inadequate public improvements and infrastructure to support the development of the Development Area. In its current state, the Development Area is not suited for residential or commercial use. The Development Area faces several infrastructure issues that will prevent it from attracting new development and experiencing long term economic growth without the

assistance of the LFUCG and State. The Development Area lacks the necessary utilities, walkways, fencing/barriers, public parking and sanitary and storm sewer infrastructure to support the increased demand from the planned Project within the Development Area. These public infrastructure needs are significant and are of critical importance to the successful redevelopment of the Development Area and to support the sustained economic activity proposed by the Project;

- (e) That the Development Area is not reasonably expected to be developed without public assistance. The public infrastructure costs associated with any successful development of the Development Area are too high to occur without the help of the public. It is estimated that the total cost of these public infrastructure improvements needed within the Development Area is approximately \$26.5 million. Without public funding, including the critical pledge of State incremental revenues under the Commonwealth Participation Program for Mixed-Use Redevelopment in Blighted Urban Areas, as provided in the Act, the proposed Project within the Development Area would not be possible;
- (f) That the public benefits of developing the Development Area justify the public costs proposed. As detailed in the Commonwealth Economics Report, attached hereto as Exhibit "B" to the Development Plan, (the "Report"), the public investment is expected to reach \$26.5 million, but the private investment within the Development Area will support over 1,000 new construction jobs and approximately 3,000 new permanent jobs throughout the region. The proposed improvements will encourage new visitation to the area and provide necessary amenities for existing residents and new visitors alike. While the LFUCG will pledge eighty percent (80%) of new ad valorem property taxes and occupational taxes to help pay for the public projects proposed, it will generate significant new revenues from the twenty (20%) of those new Incremental Revenues not pledged and one hundred (100%) of the other local taxes generated from the Project. Under the Act, school systems may not participate in the pledge of Incremental Revenues. Therefore, the local school system will receive significant new revenues from the Project within the Development Area;

The fiscal benefits far exceed the existing tax revenue from the Development Area, which has been estimated at \$21,512 annually (by end of 2012 estimates). In a 20-year period, which begins at full operation, the Project is estimated to generate a total of about \$160.7 million in State and LFUCG tax revenues. By contrast, if the site remains "as-is", tax revenues are estimated to amount to \$558,337 during the same period. As a result, incremental tax revenues are estimated to amount to \$160.2 million. After 20 percent is retained, such amount translates to an

estimated \$113.4 million of cash available from the State and an estimated \$14.7 million from the LFUCG.

It is proposed that the incremental revenues from the LFUCG and State will be used to fund the capital costs and financing of the "Approved Public Infrastructure" as defined by the Act, needed for the Project within the Development Area. The estimated cost of the Approved Public Infrastructure needed for the Project is approximately \$26.5 million. It is estimated that approximately \$176.7 million in LFUCG and State Incremental Revenues from the Project will be available over 20 years to pay for Approved Public Infrastructure costs needed for the Project. The net present value of this \$176.7 million is dependent upon many variables in the tax-exempt financing/bonding market. After subtracting the baseline "old revenues" as required by the Act, the estimated net new incremental tax revenue generated by the Project is \$95 million. This amount far exceeds the estimated \$36 million in approved public infrastructure costs. As a result, the Project represents an enormous benefit to Lexington and the State. In addition, the significant investment represented by the Project will act as a catalyst for other development in the area;

SECTION 3. Establishment, Name, Boundaries. All that area described herein by Exhibit A attached hereto and made a part hereof, is located within the LFUCG and is hereby established and designated as the "The Summit Lexington Development Area". At the time of the enactment of this Ordinance the Development Area is less than three (3) square miles.

SECTION 4. Establishment Date, Commencement Date, Termination date. The Establishment Date is the effective date of this Ordinance. The Commencement Date of the Development Area is the date of execution of the Local Participation Agreement and the Termination Date shall be exactly twenty (20) years subsequent to such date; provided, that if the Tax Incentive Agreement for the Project or a Local Participation Agreement relating to the Development Area has a Termination Date that is later than the Termination Date established in this Ordinance, the Termination Date for the Development Area shall be extended to the Termination Date of the Tax Incentive Agreement, or the Local Participation Agreement. However, the Termination Date for the Development Area shall in no event be more than forty (40) years from the Establishment Date.

SECTION 5. Adoption of Development Plan. The LFUCG hereby adopts the Development Plan, attached hereto as Exhibit C. The LFUCG Council hereby finds and determines that a public hearing was duly held on July 9, 2013 to solicit public comment on the Development Plan, following publication of notice thereof in accordance with Chapter 424 of the Kentucky Revised Statutes, as amended. It is hereby confirmed that a copy of the Development Plan was filed with the LFUCG Clerk of Council on July 1, 2013, and with the Office of the Fayette County Judge/Executive on July 1, 2013.

SECTION 6. Local Participation Agreement. The Mayor of the LFUCG is hereby

authorized and directed to execute, acknowledge and deliver on behalf of the LFUCG a Local Participation Agreement, a form of which is attached as Exhibit B and made a part hereof, between the LFUCG, the Agency, and the Developer, authorizing the pledge of a portion of the Incremental Revenues of the LFUCG from the Development Area to the payment of Approved Public Infrastructure Costs and Land Preparation Costs. The form of Local Participation Agreement to be signed by the Mayor on behalf of the LFUCG and by the Commissioner of the Department of Finance, on behalf of the Agency, and by the Developer, shall be in substantially the form attached hereto, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the LFUCG. The approval of such changes by said officers, and that such changes are not substantially adverse to the LFUCG, shall be conclusively evidenced by the execution of such Local Participation Agreement by such officials.

SECTION 7. Special Fund. There is hereby established a Special Fund of the LFUCG to be known as The Summit Lexington Development Area Tax Increment Fund, into which the LFUCG covenants to deposit, and into which LFUCG officials are hereby authorized and directed to deposit all Pledged Revenues. The LFUCG's Agency shall maintain the Special Fund unencumbered except for the purposes set forth in Section 8 hereof. Funds deposited in the Special Fund shall be disbursed in accordance with the Act, this Ordinance, the Local Participation Agreement, Tax Incentive Agreement, the Development Plan and related documents to pay for Approved Public Infrastructure Costs and Land Preparation Costs within the Development Area.

SECTION 8. Use of Pledged Revenues. Pledged Revenues shall be deposited by the LFUCG into the Special Fund created under Section 7 hereof and shall be used solely to: (a) pay directly or reimburse the Developer for Approved Public Infrastructure Costs and Land Preparation Costs in accordance with the Local Participation Agreement, Tax Incentive Agreement, and the Development Plan; and (b) for such other purposes as may be determined by the LFUCG and that are appropriate and in compliance with the purposes set forth in this Ordinance, the Local Participation Agreement, the Tax Incentive Agreement, the Development Plan, and the Act, as the same may be amended from time to time.

SECTION 9. Authorization of Application to KEDFA. The Mayor and other officials of the LFUCG are hereby further authorized and directed to execute, acknowledge and deliver on behalf of the LFUCG or the Agency one or more applications to KEDFA and related offices of the State in order to obtain "Mixed-Use Project" status for the Project within the Development Area.

SECTION 10. Periodic Accounting / Analysis. Any entity, other than the LFUCG, that receives financial assistance pursuant to the provisions of this Ordinance, whether in the form of a grant or loan or loan guarantee shall make a periodic accounting to the governing body of the LFUCG in accordance with the Act and the documents controlling such grant, loan or loan guarantee.

The governing body of the LFUCG shall be required to review and analyze the progress of the development activity in the Development Area on an annual basis. Such reports shall, at

a minimum, include a review of the progress in meeting the stated goals of the Development Area. The Mayor and other officials of the LFUCG shall report to the governing body of the LFUCG during such reviews and shall, when necessary, invite developers to participate in the review process to report on the progress of their developments within the Development Area. The review and documentation supporting the review shall be forwarded to KEDFA in accordance with the Act.

SECTION 11. Designation of Oversight Agency. Pursuant to the Act, the LFUCG hereby designates the Department of Finance of the LFUCG as the agency (the "Agency") of the LFUCG for purposes of oversight, administration and review responsibility of this Development Area Ordinance, the Local Participation Agreement and the Development Area established hereby. The Agency shall act on behalf of the LFUCG in administering the Development Area, entering into agreements, and other related agreements, with respect to the development of the Development Area and the financing of Approved Public Infrastructure Costs and Land Preparation Costs. The Department of Finance is hereby authorized and directed to execute the Local Participation Agreement on behalf of the Agency and to take other appropriate action to carry-out the terms of this ordinance and the Local Participation Agreement.

SECTION 12. Authorization of LFUCG Officials. The Mayor and other appropriate LFUCG officials, officers, employees and agents are hereby authorized to take all necessary actions to submit the necessary application and other documents to KEDFA and any other necessary entities to obtain the necessary approvals and to take all necessary actions as required by the KEDFA and other entities to meet all of the requirements of and qualify to participate in the Mixed-Use Project Program as set forth in the Act, and to carry out the intent of this Ordinance, including being authorized to execute any Memorandum of Agreement and/or Tax Incentive Agreement between KEDFA and the LFUCG or Agency approving a pledge of State Incremental Revenues for the Project pursuant to the Act.

SECTION 14. Severability. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION 15. Repeal of Conflicting Orders and Ordinances. All prior resolutions, municipal orders or ordinances or parts of any resolution, municipal order or ordinance in conflict herewith are hereby repealed.

SECTION 16. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation, recordation and publication of a summary hereof pursuant to KRS Chapter 424.

INTRODUCED, SECONDED AND GIVEN FIRST-READING APPROVAL AT A DULY CONVENED MEETING OF THE LFUCG COUNCIL, held on the _____ day of _____, 2013.

GIVEN SECOND READING AND ADOPTED AT A DULY CONVENED MEETING OF THE LFUCG COUNCIL, held on the _____ day of _____.

2013 and on the same occasion signed by the Mayor as evidence of his approval, attested by the LFUCG Clerk of Council, published and filed as required by law, and declared to be in full force and effect from and after its adoption and approval according to law.

Approved:

By: _____
Mayor

ATTEST:

By: _____
Clerk of Council

PUBLISHED:

EXHIBITS

Exhibit A: Development Area Map and Description

Exhibit B: TIF Development Plan

Exhibit C: Local Participation Agreement

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