

LOCAL PARTICIPATION AGREEMENT
FOR
THE THISTLE STATION DEVELOPMENT AREA
BY AND BETWEEN
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
A Kentucky Urban County Government
AND
DEPARTMENT OF FINANCE FOR
THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
FEBRUARY 1, 2016

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 – Listing of Old Revenues Collected from Development Area and Anticipated Incremental Revenues for LFUCG

INDEX
TO
LOCAL PARTICIPATION AGREEMENT
DATED
February 1, 2016
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AND
DEPARTMENT OF FINANCE FOR THE LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

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LOCAL PARTICIPATION AGREEMENT
Thistle Station Development Area

THIS LOCAL PARTICIPATION AGREEMENT (this “Agreement”) is made as of February 1, 2016 (the “Effective Date”) by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, a Kentucky urban county government (“LFUCG”), and the DEPARTMENT OF FINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (the “Agency”),(collectively, the “Parties”);

RECITALS

WHEREAS, pursuant to the Act, as hereinafter defined, LFUCG has on the ____ day of _____, 2016, adopted Ordinance Number _____, (the “Development Area Ordinance”), whereby it established the Thistle Station Development Area (the “Development Area”) for the purpose of promoting a mixed-use development of previously developed land; and

WHEREAS, the Council of LFUCG recognizes and determines individually that the real property that constitutes the Development Area has been and is currently characterized by vacant parcels, deteriorated structures and underutilized land, that continuation of the physical deterioration and inadequate infrastructure within the Development Area will discourage and interfere with LFUCG’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 LFUCG recognizes and determines individually that the project is a mixed-use development which includes significant public infrastructure improvements; and

WHEREAS, the Parties recognize that the redevelopment of the Development Area, will not likely occur without a public-private partnership and financial assistance provided to the Project by 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 LFUCG has authorized the Mayor to execute and enter into this Agreement with the Agency, and LFUCG desires to enter into this Agreement; and

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

WHEREAS, pursuant to the Act (as hereinafter defined), LFUCG and the Agency 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. “Activation”. Shall mean the first day of the calendar year for the computation of Incremental Revenues, which date shall be determined in accordance with Section X of this Agreement.
3. “Administrative Costs”. Shall mean those costs set forth in the Master Development Agreement at Section V(A) to be retained by the Agency before reimbursing the Developer for any Public Infrastructure Costs.
4. “Agreement”. Shall mean this Local Participation Agreement, including all Exhibits attached hereto.
5. “Approved Public Infrastructure Costs”. Shall be the Capital Investment, as defined in the Act, within the Development Area that is approved for reimbursement under the Act by KEDFA, and as further identified in the Tax Incentive Agreement.
6. “Commonwealth Program”. Shall mean the Commonwealth Participation Program for State Real Property Ad Valorem Tax Revenues as provided in the Act.

7. “Developer” or “Master Developer”. Shall mean Thistle Holdings, LLC, a Kentucky limited liability company, its successors, affiliates, subsidiaries or related entities.

8. “Development Area”. Shall have the meaning given in the Recitals to this Agreement.

9. “Development Area Ordinance.” Shall mean Ordinance No. _____, adopted by LFUCG on _____, 2016.

10. “Effective Date”. Shall have the meaning given in the introductory paragraph of this Agreement.

11. “Incremental Revenues”. Shall mean the net amount of tax revenues received by LFUCG by subtracting Old Revenues from New Revenues in each calendar year after Activation.

12. “KEDFA”. Shall mean the Kentucky Economic Development Finance Authority.

13. “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.

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

15. “Master Development Agreement”. Shall mean the Master Development Agreement dated February 1, 2016, among LFUCG, the Agency, and the Developer relating to the Project.

16. “New Revenues”. Shall mean the ad valorem real property tax revenues received by LFUCG from its general tax rate and urban services tax rate from the Development Area, but not including any amount required to be paid to the Lexington Public Library District, during each calendar year after Activation.

17. “Old Revenues”. Shall mean the ad valorem real property tax revenues received by LFUCG from its general tax rate and urban services tax rate from the Development Area in calendar year 2015, but not including any amount required to be paid to the Lexington Public Library District.

18. “Project Financing”. Shall mean the financing needed to provide for the development and construction of the Project elements or any financing received by the Developer, not including the pledge of Incremental Revenues from LFUCG or the State.

19. “Project”. Shall mean the improvements within the Development Area.

20. “Project Costs”. Shall mean any capital investment within the Development Area as defined in the Act.

21. “Public Infrastructure Costs.” Shall mean the Project costs eligible for reimbursement by Incremental Revenues from LFUCG and the State, including “Approved Public Infrastructure Costs.”

22. “Redevelopment Assistance”. Shall have the same meaning as provided in the Act.

23. “Special Fund”. Shall mean the Thistle Station Development Area Tax Increment Fund established in the Development Area Ordinance and maintained by the Agency, for the purpose of holding LFUCG’s and the State Incremental Revenues pledged herein or by the Tax Incentive Agreement in connection with the development of the Project.

24. “State”. Shall mean the Commonwealth of Kentucky, including any of its agencies and departments.

25. “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 in connection with the construction of the Project.

26. “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 LFUCG, the Agency, and the Developer.

SECTION IV
Duties and Responsibilities of LFUCG

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

1. Provide for the establishment of LFUCG Special Fund for the collection of Incremental Revenues pledged herein from LFUCG real property ad valorem taxes (including the general tax rate less the Library portion and also the urban services tax rate), within the Development Area from the Project.

2. Pledge one hundred percent (100%) of LFUCG's Incremental Revenues to pay for Administrative Costs, support the cost of Public Infrastructure Costs, and after those costs are paid, to provide Redevelopment Assistance within the Development Area as determined by LFUCG, for up to a twenty (20) year period, which pledge is made in Section VI herein.

3. Make, in participation with the Agency and the Developer, application to the KEDFA requesting State participation under the "Commonwealth Program" in accordance with applicable provisions of the Act.

4. Designate the Agency as the entity responsible for the oversight, administration, and implementation of the Development Area Ordinance.

5. Meet as may be required 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, as the "Agency" for purposes of the Act, to prepare by no later than June 1, or such other date to meet the reporting schedule of KEDFA, or the State to receive State Incremental Revenues under the Tax Incentive Agreement, of each year during the term of this Agreement an annual report and provide same to LFUCG and KEDFA including, but not limited to: (a) the total real property taxes collected within the Development Area during the previous calendar year; (b) a determination of Incremental 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 Public Infrastructure Costs and/or Redevelopment Assistance in connection with the Project.

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 LFUCG and the Developer in the application to KEDFA, requesting State participation under the “Commonwealth Program” in accordance with the applicable provisions of the Act.

3. Meet as may be required with the Developer and 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 June 1, or such other date to meet the reporting schedule of KEDFA, or the State to receive State Incremental Revenues under the Tax Incentive Agreement, of each year during the term of this Agreement an annual report and provide same to LFUCG, the Developer and KEDFA including, but not limited to: (a) the total real property taxes collected within the Development Area during the previous calendar year; (b) a determination of Incremental 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 Public Infrastructure Costs and/or Redevelopment Assistance.

5. Beginning in the calendar year of the Activation Date, upon the receipt of the deposits of Incremental Revenues into the Special Fund from LFUCG or the State, the Agency, providing that the Developer has complied with its obligations and conditions set forth in the Master Development Agreement, shall annually pay such funds to the Developer (as applicable)

within thirty (30) days but not later than June 30, sufficient to cover the payment or reimbursement Administrative Costs, Public Infrastructure Costs, and Redevelopment Assistance costs pursuant to the terms set forth in this Agreement and the Master Development Agreement, but any payments to the Developer shall not exceed two million seven hundred thousand dollars (\$2,700,000) in total.

6. Comply with any requirements and carry out any duties and responsibilities as the Agency under the terms of the Tax Incentive Agreement, the Master Development Agreement, and this Agreement.

SECTION VI
Identification and Pledge of Incremental Revenues

1. To the extent Incremental Revenues are generated, for up to a twenty (20) year period after the Activation Date of the Development Area, LFUCG hereby pledges one-hundred percent (100%) of its Incremental Revenues to support the payment of Administrative Costs, Public Infrastructure Costs, in accordance with the Master Development Agreement, and after those costs are paid, Redevelopment Assistance as determined by LFUCG; provided, however, that the pledge of LFUCG Incremental Revenues shall be conditioned upon the approval of State participation as a “Commonwealth Project” as provided in the Act. An estimate of the Old Revenues collected by LFUCG from within the Development Area is attached as Exhibit D. Nothing contained herein shall be interpreted to prohibit LFUCG from terminating the Development Area and any agreement incident thereto, after the Developer has been reimbursed the amount of Public Infrastructure Costs as set forth in the Master Development Agreement.

2. Incremental Revenues pledged by LFUCG in this Section VI and received by the Agency shall be deposited at least annually, no later than each June 1st after the first calendar year of activation, to the Special Fund and shall be held by the Agency and used solely for

payment of Administrative Costs, Public Infrastructure Costs, and/or Redevelopment Assistance in support of the Project and for no other purpose. Such 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 for the payment of costs as provided in this Section VI of this Agreement, and for no other purpose. The Special Fund shall be continued and maintained until the Termination Date of the Development Area.

3. At the Termination Date (as defined in the Development Area Ordinance) all amounts remaining in the Special Fund shall be transferred to the General Fund of LFUCG.

SECTION VII
Anticipated Benefits to LFUCG

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. Estimates of Old Revenues and projected New Revenues for LFUCG on an annual basis during the term of this Agreement are attached as Exhibit D hereto. The maximum amount of Incremental Revenues to be paid by LFUCG shall be one hundred percent (100%) 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 VIII
Description of Development Area

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

SECTION IX
Description of Project; Costs

A detailed description of 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 Project. 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 LFUCG. Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that the Project may be changed and modified, so long as the overall project concept remains the same.

SECTION X
Commencement Date; Activation Date; Termination Date

This Agreement shall commence and be effective as of the date of execution hereof by LFUCG. The activation date for the pledge of Incremental Revenues as set forth in Section VI hereof shall be determined by 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 XI
Default

If 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 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 XII
Governing Law

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

SECTION XIII
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 XIV
Force Majeure

A party 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 XV
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 LFUCG: Mayor Jim Gray
200 East Main Street
Lexington, Kentucky 40507

With Copies to: Kevin Atkins, Chief Development Officer
Government Center
200 East Main Street
Lexington, Kentucky 40507

Janet M. Graham
Commissioner of Law
Government Center
200 East Main Street
Lexington, Kentucky 40507

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

With a Copy to: Janet M. Graham
Commissioner of Law
Government Center
200 East Main Street
Lexington, Kentucky 40507

SECTION XVI
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 XVII
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 XVIII
Successors and Assigns

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

SECTION XIX
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 XX
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 XXI
No Waiver; Construction

No waiver of any condition or covenant of this Agreement to be satisfied or performed by 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.

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

SECTION XXII
Multiple Counterparts

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

SECTION XXIII
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 XXIV
No Third Party Beneficiary

Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of 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 XXV
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 XXVI
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 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

Approval as to Form:

By: _____
Jim Gray, Mayor

Janet M. Graham
Commissioner of Law for the

Lexington-Fayette Urban County
Government

DEPARTMENT OF FINANCE FOR
THE LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

By: _____
William O'Mara, Commissioner of Finance

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: Estimated Old Revenues from Development Area and Anticipated
Incremental Revenues for LFUCG**

Exhibit A: Development Area Map and Description

Exhibit B: The Project

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

**Exhibit D: Listing of Old Revenues Collected by LFUCG from Development Area
and Anticipated Incremental Revenues for LFUCG**