

LOCAL PARTICIPATION AGREEMENT
FOR
LEXINGTON CENTER DEVELOPMENT AREA
BY AND AMONG
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
A Kentucky Urban County Government
AND
DEPARTMENT OF FINANCE FOR
THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AND
LEXINGTON CENTER CORPORATION
A nonprofit corporation organized and
existing under the laws of the Commonwealth of Kentucky

- Exhibit A – The Development Area.**
- Exhibit B – The Project.**
- 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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 LOCAL PARTICIPATION AGREEMENT
 LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
 AND
 DEPARTMENT OF FINANCE FOR THE LEXINGTON-FAYETTE URBAN COUNTY
 GOVERNMENT
 AND
 LEXINGTON CENTER CORPORATION

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**LOCAL PARTICIPATION AGREEMENT
Lexington Center Development Area**

THIS LOCAL PARTICIPATION AGREEMENT (this "Agreement") is made as of the date of the Tax Incentive Agreement [as hereinafter defined] (the "Effective Date") by and among the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, a Kentucky urban county government (the "LFUCG"), the DEPARTMENT OF FINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (the "Agency"), and the LEXINGTON CENTER CORPORATION, a nonprofit corporation organized and existing under the laws of the Commonwealth of Kentucky ("Developer"), collectively (the "Parties"):

RECITALS

WHEREAS, pursuant to the Act, as hereinafter defined, the LFUCG has on the ___ day of _____ 2018, adopted Ordinance Number _____, (the "Development Area Ordinance"), whereby it established the Lexington Center Development Area (the "Development Area") for the purpose of promoting the redevelopment of previously developed land; and

WHEREAS, the Council of the 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 Fayette 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 Fayette 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 significant public infrastructure improvements; and

WHEREAS, LFUCG has previously committed \$30,000,000 in funds to the Project to assist the expansion of Lexington Center (the "Lexington Center Contribution"); 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.

2. "Activation". Shall mean the 1st day of the calendar year for the computation of LFUCG Incremental Revenues, which shall be determined as provided in Section XII of this Agreement, but which shall be no later than four (4) years from the date 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 Agency before reimbursing any costs to the Developer for 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, to the extent approved for reimbursement under the Act by KEDFA, pursuant to and as identified in the Tax Incentive Agreement.

6. "Commonwealth Participation Program". Shall mean the State tax increment financing participation program(s) as set forth in KRS 154.30-010 to KRS 154.30-090 of the Act which allow participation of State Incremental Tax Revenues in respective project(s) within a development area.

7. "Developer" or "Master Developer". Shall mean the Lexington Center Corporation, 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 the LFUCG on _____, 2018.

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

11. "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 Parties.

12. "Footprint". Shall mean the area identified within the Development Area, which may be the entire Development Area, for the computation and pledge of State Incremental Tax Revenues as set forth within the Tax Incentive Agreement.

13. "High Street Parking Structure". Shall mean the public parking structure or structures to be constructed as part of the Project on the High Street surface parking lot located within the Development Area.

14. "Lexington Center Contribution". Shall mean the \$30,000,000 that has been committed or expended by LFUCG for the Lexington Center expansion.

15. "LFUCG Incremental Revenues". Shall mean the amount of tax revenues received by LFUCG with respect to the Footprint by subtracting Old Revenues from New Revenues in a calendar year after Activation.

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

17. "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.

18. "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.

19. "Master Development Agreement". Shall mean the Master Development Agreement among LFUCG, the Agency, and the Developer relating to the Project, dated the ____ day of _____, 2018, attached as Exhibit ____ to the Development Area Ordinance.

20. "Mixed-Use Program". Shall mean the Commonwealth Participation Program for Mixed-Use Development in Blighted Urban Areas as set forth at KRS 154.30-060 of the Act.

21. "New Revenues". Shall mean the total taxes received by LFUCG from occupational taxes (net profits taxes and employee payroll taxes) and from real property *ad valorem* taxes, from the general tax rate applicable to Fayette County, and excluding the special tax rates for refuse, street cleaning and street lights, and any portion of the general *ad valorem* tax rate designated for the Lexington Public Library District from the Footprint during a calendar year after Activation.

22. "Old Revenues". Shall mean the total taxes received by LFUCG from occupational taxes (net profits taxes and employee payroll taxes) and from real property *ad valorem* taxes, from the general tax rate applicable to Fayette County, excluding the special rates for refuse, street cleaning and street lights, and any portion of the general

ad valorem tax rate designated for the Lexington Public Library District from the Footprint for base year as set forth in the Tax Incentive Agreement.

23. "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 LFUCG Incremental Revenues and/or State Incremental Revenues.

24. "Project" Shall mean the improvements within the Development Area.

25. "Redevelopment Assistance." Shall have the meaning as provided in the Act, and shall be the costs that may be paid or reimbursed from LFUCG Incremental Revenues, and which shall be limited to the actual Capital Investment for the High Street Parking Structure and to reimburse LFUCG for the Lexington Center Contribution.

26. "Signature Project Program". Shall mean the Commonwealth Participation Program for Signature Projects as set forth at KRS 154.30-050 of the Act.

27. "Signature Project". Shall mean a project meeting the qualifications of the Signature Projects Program as provided and defined in the Act.

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

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

30. "State Incremental Revenues". Shall mean the incremental state taxes pledged to reimburse Approved Public Infrastructure Costs as set forth in the Tax Incentive Agreement.

31. "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.

32. "TIF Documents". Shall mean the Development Area Ordinance, the Agreement, the Master Development Agreement, and the Tax Incentive Agreement.

33. "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 property ad

valorem taxes and occupational taxes (consisting of business occupational taxes and employee payroll taxes), within the Development Area from the Project.

2. Pledge eighty percent (80%) of the LFUCG Incremental Revenues to pay for Administrative Costs, and then to reimburse the Developer and/or LFUCG for costs expended for Redevelopment Assistance, for up to a thirty (30) year period if the Project is approved by KEDFA under the Signature Project Program, and up to a twenty (20) year period if the Project is approved by KEDFA under the Mixed-Use Program, which pledge is made in Section VII herein.

3. Make, in participation with the Agency and the Developer, application to the KEDFA requesting State participation under a Commonwealth Participation Program in accordance with applicable provisions of the Act. The application shall request State participation, as provided in the Financing Plan; provided that the Developer shall pay the cost of any application and administrative fees to KEDFA; any consultant fees, and any professional fees incurred by KEDFA related to filing and approval of the application under the Commonwealth Participation Program, and/or related to the approval of the Tax Incentive Agreement; and any out of pocket costs, including professional fees, incurred by LFUCG relating to the establishment of the Development Area and the approval of the Tax Incentive Agreement, and any amendments thereto.

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 TIF Documents and Act.

6. Require its Department of Finance, as the "Agency" for purposes of the Act, to prepare by no later than April 1st, or such other date to meet the reporting schedule of KEDFA and/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 the LFUCG and KEDFA including, but not limited to: (a) the New Revenues collected within the Footprint during the previous calendar year; (b) a determination of LFUCG Incremental Revenues collected within the Footprint during the previous calendar year; and (c) the amount, if any, of LFUCG Incremental Revenues and State Incremental Revenues expended from the Special Fund to pay for or reimburse Administrative Costs, Redevelopment Assistance, and Approved Public Infrastructure 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 a Commonwealth Participation 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 may be required 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 April 1st, 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 the LFUCG, the Developer and KEDFA including, but not limited to: (a) New Revenues collected within the Footprint during the previous calendar year; (b) a determination of LFUCG Incremental Revenues collected within the Footprint during the previous calendar year; and (c) the amount, if any, LFUCG Incremental Revenues and State Incremental Revenues expend from the Special Fund to pay for or reimburse Administrative Costs, Redevelopment Assistance and Approved Public Infrastructure Costs.

5. Comply with any requirements and carry out any duties and responsibilities as the Agency under the terms of the TIF Documents, including expending LFUCG Incremental Revenues and State Incremental Revenues required by the Agency as required by this Agreement the Tax Incentive Agreement.

SECTION VI
Duties and Responsibilities of the Developer

1. The Developer shall be responsible for managing, coordinating, designing, obtaining necessary Project Financing, and constructing the Project, as provided in the Master Development Agreement.

2. The Developer shall meet with the LFUCG and Agency as requested to provide updates regarding the status of the Project. The Developer, for as long as required by the Master Development Agreement and/or Tax Incentive Agreement, shall provide annually to the Agency a certified account of Capital Investment (as defined in the Act) and Approved Public Infrastructure Costs, including those costs related to the High Street Parking Structure, that have been expended on the Project.

3. The Developer shall provide the Agency information related to the Project in order to enable the Agency to timely comply with any reporting requirements related to the Project as set forth in the Tax Incentive Agreement. The Developer shall also require any businesses within the Development Area to obtain separate local and state business licenses as required by the Tax Incentive Agreement, and to assist LFUCG in the tracking and computing of New Revenues related to the computation of the LFUCG Incremental Revenues and State Incremental Revenues.

4. In the event the Developer fails to timely comply with the reporting and other requirements in Section VI(3) of this Agreement, the LFUCG, may at its option, suspend the payments of LFUCG Incremental Revenues or State Incremental Revenues to the Developer as required herein, until such time as the Developer complies with the reporting or other requirements; provided, that after notice the Developer fails to provide the requested information, or repeatedly provides the information late, the

LFUCG and Agency may terminate this Agreement, which termination shall be provided by written notice to the Developer.

SECTION VII
Identification and Pledge of Incremental Revenues

1. The LFUCG hereby pledges eighty percent (80%) of the LFUCG Incremental Revenues, first to pay for Administrative Costs, then to reimburse the Developer for twenty percent (20%) of the portion of Redevelopment Assistance pledged for the High Street Parking Structure, then to reimburse LFUCG for Redevelopment Assistance related to the Lexington Center Contribution, and then to reimburse Developer for any other Redevelopment Assistance related to the High Street Parking Structure, for up to a thirty (30) year period if the Project is approved by KEDFA under the Signature Project Program, and for up to a twenty (20) year period if the Project is approved by KEDFA under the Mixed-Use Program, after Activation of the Development Area; provided, however, that the pledge of LFUCG Incremental Revenues shall be conditioned upon the approval of a Tax Incentive Agreement pledging State Incremental Revenues under a Commonwealth Participation Program; and further the release of LFUCG Incremental Revenues shall not occur until the Minimum Capital Investment in the Tax Incentive Agreement has been achieved and certified. The LFUCG Incremental Revenues shall be determined annually after Activation by calculating the New Revenues and subtracting the Old Revenues. An estimate of the Old Revenues collected by the LFUCG from within the Development Area is attached hereto as Exhibit E.

2. LFUCG Incremental Revenues pledged by the LFUCG in this Section 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 to pay Administrative Costs, and then to reimburse the Developer and/or LFUCG for Redevelopment Assistance, 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 VII of this Agreement, and for no other purpose.

3. LFUCG Incremental Revenues and State Incremental Revenues that are deposited in the Special Fund and due to the Developer shall be paid to the Developer no later that sixty (60) days from the date they are deposited in the Special Fund, but subject to the conditions on the release of LFUCG Incremental Revenues as set forth in Section VII(1) of this Agreement.

4. At the Termination Date (as defined in the Development Area Ordinance), after all amounts due the Developer as provided herein have been paid, all amounts remaining in the Special Fund shall be transferred to the General Fund of the LFUCG.

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. Estimates 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 LFUCG Incremental Revenues to be paid by the LFUCG shall be eighty percent (80%) of the LFUCG Incremental Revenues generated from the Footprint, but subject to the other conditions of this

Agreement, and the maximum number of years the payment of Incremental Revenues to support the development of the Development Area will be made is thirty (30) 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 LFUCG Incremental Revenues and State Incremental Revenues are listed on the attached Exhibit C, provided that LFUCG Incremental Revenues shall only reimburse Approved Public Infrastructure Costs that are included within the definition of Redevelopment Assistance, subject to further amendment with approval by the Parties.

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 and that more specific details of the nature of each aspect of financing the Project shall be more particularly contained in any Project Financing and other documents at the time that each aspect of the financing needed for the Project is obtained; provided, however without further approval of the LFUCG, the LFUCG Incremental Revenues and the State Incremental Revenues shall be used to reimburse Approved Public Infrastructure Costs

and Redevelopment Assistance expended by the Developer and/or LFUCG, and not to support increment bonds issued or backed by LFUCG. However, the pledge of LFUCG Incremental Revenues herein to support payment of Redevelopment Assistance to support the Project shall not be modified without the specific approval of the LFUCG and the Developer.

It is understood by the parties that the Project Financing for the Project as provided in this Agreement shall not constitute a debt of the LFUCG, the Agency or the State or a pledge of the full faith and credit of the LFUCG, the Agency or the State and the LFUCG, the Agency and the State shall have no obligation, whatsoever, toward the payment of any Developer's costs for the Project beyond the pledge of LFUCG Incremental Revenues or State Incremental Revenues as provided for in this Agreement, and that any Project Financing needed for the Project shall be the responsibility of the Developer.

Nothing contained herein shall be interpreted to impact or limit in any way any previously authorized commitment by LFUCG to the expansion of the Lexington Center.

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 thirty (30) years after Activation (provided that if the Project is approved under the Mixed-Use Program this Agreement shall terminate twenty (20) years after the Activation. 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 Commonwealth of Kentucky 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

With additional
Copies to: Kevin Atkins
Chief Development Officer
200 E. Main Street
Lexington, Kentucky 40507

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

With additional
Copies to: Kevin Atkins
Chief Development Officer
200 East Main Street
Lexington, KY 40507

If to Developer: Bill Owen
President, CEO
Lexington Center Corporation
430 West Vine St
Lexington, KY 40507

With Copies
(which shall not
constitute notice) to: _____

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.

SECTION XXIV
Construction

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

SECTION XXV
Multiple Counterparts

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

SECTION XXVI
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 XXVII
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 XXVIII
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.