

**AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT**  
**FOR**  
**TURFLAND TOWN CENTER DEVELOPMENT AREA**  
**BY AND BETWEEN**  
**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**  
**A Kentucky Urban County Government**  
**AND**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION FOR**  
**THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**  
**September 1, 2014**

**Exhibit A – The Development Area**

**Exhibit B – The Project, including an estimate of costs of construction, acquisition and development**

**Exhibit C – Listing of Old Revenues Collected from Development Area**

**Exhibit D – Listing of Anticipated Incremental Revenues for the LFUCG**

**Exhibit E – Master Development Agreement**

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TO  
AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT  
DATED  
September 1, 2014  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AND  
DEPARTMENT OF FINANCE AND ADMINISTRATION FOR THE LEXINGTON-  
FAYETTE URBAN COUNTY GOVERNMENT

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## AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT

THIS AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT (this “Agreement”) is made as of the 1st day of September, 2014 (the “Effective Date”) by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, a Kentucky urban county government (the “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 by Ordinance No. 78-2010 (the “Development Area Ordinance”), adopted on May 6, 2010, established the Turfland Town Center Development Area (the “Development Area”) and pledged certain LFUCG Incremental Revenues, through the execution of a local participation agreement as provided in the Act, dated May, 1, 2010 (the “Local Participation Agreement”) to pay for project costs and redevelopment assistance within the Development Area as more specifically identified within the Local Participation Agreement; and

WHEREAS, pursuant to the Act, as hereinafter defined, the LFUCG has on the \_\_ day of August, 2014, adopted Ordinance Number \_\_\_\_\_, the “Ordinance”, whereby it approved the execution of this Agreement for the Development Area for the purpose of promoting a redevelopment project within the LFUCG, more fully described in this Agreement and in the Master Development Agreement, hereinafter defined; and

WHEREAS, the LFUCG recognizes and determines that the real property that constitutes the Development Area has been and is presently characterized by vacant parcels and deteriorated structures, that continuation of the physical deterioration within

the Development Area will discourage and interfere with the LFUCG's growth and the improvement of areas surrounding the Development 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 LFUCG 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 LFUCG and the State; and

WHEREAS, the Parties recognize that the Project and redevelopment of the Development Area, will not 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 Ordinance, the Council of the LFUCG has authorized the Mayor to execute and enter into this Agreement with the Agency and the LFUCG desires to enter into this Agreement; and

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

WHEREAS, pursuant to the Act (as hereinafter defined), the LFUCG and the Agency desire to set forth their mutual agreements, understandings and obligations in

this 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 Preambles

The Parties hereto agree that the above “preambles” or “preamble 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. “Administrative Costs”. Shall mean those costs set forth the Master Development Agreement at Section V(A) to be retained by the Agency before reimbursing any costs to the Developer for Public Infrastructure Improvements.
3. “Agreement”. Shall mean this Amended and Restated Local Participation Agreement, including all Exhibits attached hereto.

4. “Approved Public Infrastructure Costs”. Shall be the Capital Investment as defined in the Act, and approved by KEDFA, for reimbursement from State Incremental Revenues in the Tax Incentive Agreement.

5. “Developer” or “Master Developer”. Shall mean Turf Development, LLC, a Kentucky limited liability company..

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

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

8. “Financing Plan”. Shall mean the plan for financing the Project as described in Section X of this Agreement, as it may be amended with the approval of the LFUCG.

9. “Incremental Revenues”. Shall have the meaning as provided in the Act, except that Incremental Revenues shall not include any portion of the real ad valorem tax rate of the LFUCG designated for the Lexington Public Library District.

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

11. “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.

12. “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.

13. “Master Development Agreement” shall mean the Master Development Agreement dated September 1, 2014, among LFUCG, the Agency and the Developer relating to the Project, attached as Exhibit “E”.

14. “State Real Property Tax Program”. Shall mean the Commonwealth Participation Program for State Real Property Ad Valorem Tax Revenues 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. “Private Financing”. Shall mean the financing needed to provide for the development and construction of the Project elements or any financing received by the Developer that is not from LFUCG or the State.

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

19. “Public Infrastructure Improvements”. Shall mean the Capital Investment related to the Project, which includes the Approved Public Infrastructure Costs, that is identified in the Master Development Agreement for reimbursement to the Developer from Incremental Revenues from this Agreement and the Tax Incentive Agreement and which shall not exceed \$8,500,000.

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

21. “Special Fund”. Shall mean the Turfland Town Center Development Area Special Fund established in the Development Area Ordinance, for the purpose of holding the LFUCG and State Incremental Revenues pledged herein in connection with the development of the Project.

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

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 and the Agency.

### 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 ad valorem taxes and occupational taxes (consisting of business occupational taxes and payroll taxes), generated within the Development Area to pay for Administrative Costs, and Public Infrastructure Improvements, and after those costs are paid, to provide other 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 "State Real Property Tax Program" in accordance with applicable provisions of the Act. The application shall request State participation, as provided in the Financing Plan.

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

4. Meet at least quarterly 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.

5. 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 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 Administrative Costs, Public Infrastructure Improvements, 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 the LFUCG and Developer in the application to KEDFA, requesting State participation under the “State Real Property Tax Program” in accordance with the applicable provisions of the Act. The application shall request State participation, as provided in the Financing Plan.

3. Meet at least quarterly 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 June 1, or such other date as may be required 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 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 Administrative Costs, Public Infrastructure Improvements, or Redevelopment Assistance 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.

SECTION VI  
Identification and Pledge of Incremental Revenues

1. The LFUCG hereby pledges eighty percent (80%) of the LFUCG's Incremental Revenues, from LFUCG real *ad valorem* taxes and occupational taxes (consisting of business occupational taxes and payroll taxes) generated within the Development Area from the Project to support the payment Administrative Costs, Public Infrastructure Improvements, and after those costs are paid, Redevelopment Assistance as determined by LFUCG, for up to a twenty (20) year period; provided, however, that the pledge of LFUCG Incremental Revenues shall be conditioned upon the approval of a Tax Incentive Agreement by KEDFA under the State participation as a " "Real Property Tax Program' 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 2013. A listing of the Old Revenues collected by the LFUCG from within the Development Area is attached hereto on Exhibit C.

2. 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 used solely for payment of Administrative Costs, Public Infrastructure Improvements, 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.

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 the LFUCG.

#### SECTION VII 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 and projected New Revenues for the LFUCG on an annual basis during the term of this Agreement are attached as Exhibits C and D 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 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 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.

SECTION X  
Financing Plan

The financing for the Project shall generally be structured as private debt financing through credit lines established by the Developer. 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 Private Financing and other documents at the time that each aspect of the financing needed for the Project is obtained. However, the pledge of Incremental Revenues herein to support payment of Public Infrastructure Improvements for construction of the Project shall not be modified without the specific approval of the LFUCG and State.

**IT IS UNDERSTOOD BY THE PARTIES THAT THE PRIVATE 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 SUCH PAY FOR ANY DEVELOPER'S COSTS FOR THE PROJECT BEYOND THE PLEDGE OF INCREMENTAL REVENUES AS PROVIDED FOR IN THIS AGREEMENT.**

SECTION XI  
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 VI 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 XII  
Default

If the LFUCG (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) shall have the power to enforce the provisions of this Agreement against the Defaulting Party. If the LFUCG materially breaches or defaults on any of its non payment related obligations under this Agreement, any other party 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 XIII  
Governing Law

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

SECTION XIV  
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 XV  
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 XVI

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<br>200 East Main Street<br>Lexington, Kentucky 40507                         |
| With a Copy to:          | Commissioner of Law Janet M. Graham<br>200 East Main Street<br>Lexington, Kentucky 40507    |
| With additional Copy to: | Kevin Atkins, Director of Development<br>200 East Main Street<br>Lexington, Kentucky 40507  |
| If to the Agency:        | Commissioner of Finance William O'Mara<br>200 East Main Street<br>Lexington, Kentucky 40507 |



SECTION XVII  
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 XVIII  
Entirety of Agreement

As used herein, the term "Agreement" shall mean this 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 XIX  
Successors and Assigns

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

SECTION XX  
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 XXI  
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 XXII  
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 XXIII  
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 and the Agency and 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.

**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  
Its: Mayor

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

DEPARTMENT OF FINANCE

By: \_\_\_\_\_  
William O'Mara  
Commissioner of Finance

## **EXHIBITS**

**Exhibit A: Development Area Map and Description**

**Exhibit B: The Project**

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

**Exhibit D: Listing of Anticipated Incremental Revenues for the LFUCG**

**Exhibit E: Master Development Agreement**

**LFUCG Ordinance Approving LPA**