

## **TAX INCENTIVE AGREEMENT - TIF**

THIS TAX INCENTIVE AGREEMENT - TIF (the "Agreement") dated as of September 25, 2014, is made by and between (i) the KENTUCKY ECONOMIC DEVELOPMENT FINANCE AUTHORITY (the "Authority") on behalf of the COMMONWEALTH OF KENTUCKY (the "Commonwealth") and (ii) the DEPARTMENT OF FINANCE FOR THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, a department of the Lexington-Fayette Urban County Government that has been designated to manage The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing project development area (the "Agency")(collectively the "Parties").

### **RECITALS**

WHEREAS, the Authority has been created and established as a public body, corporate and politic, under KRS Section 154.20-010 and has all the powers, duties and responsibilities delegated to it by law and is empowered by KRS 154.30-030 to review and approve applications for the Commonwealth's participation in Tax Increment Financing programs and to pledge all, or a portion of, the incremental state tax revenues attributable to projects approved pursuant to the Mixed Use Redevelopment in Blighted Urban Areas Tax Increment Financing program established by KRS 154.30-060; and

WHEREAS, the Lexington-Fayette Urban County Government ("LFUCG") has established The Summit Lexington Development Area pursuant to KRS 65.7053 and has submitted an application to the Authority pursuant to KRS 154.30-030 seeking state participation in the development of The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing project, which is a 60.29 acre mixed-use redevelopment project located on the corner of Nicholasville Road and Man O'War Boulevard that will involve the acquisition, installation, construction, or reconstruction of public infrastructure, improvements to existing public infrastructure and land preparation, demolition and clearance in connection with the development of 400,000 square feet of restaurant and retail space and 350 residential units (the "Project," which is more particularly described in Exhibit A to this Agreement); and

WHEREAS, KEDFA adopted Resolution No. TIF-I-13-04 on October 31, 2013 (the "Inducement Resolution"), preliminarily approving the Project and directing an analysis of the Project to determine its net positive economic impact to the Commonwealth in accordance with KRS 154.30-030, and the parties executed a Memorandum of Agreement dated October 31, 2013 (the "Memorandum of Agreement") in connection with the preliminary approval of the Project; and

WHEREAS, Johnson Consulting (the "Consultant"), in consultation with the Office of State Budget Director and the Finance & Administration Cabinet, has analyzed the data related to the project and the development area and has submitted the report required by KRS 154.30-030 (the "Report"), in which the Consultant has determined that

the Project will not occur without the pledge of state tax incremental revenues to support the development of Approved Public Infrastructure Costs (as defined below); and

WHEREAS, based upon the Consultant's Report, the Office of State Budget Director and the Finance & Administration Cabinet has certified to the Authority that the Project will result in a net positive economic impact to the Commonwealth and that the Project is estimated to generate Twenty-Four Million, One Hundred Nine Thousand and 00/100 Dollars (\$24,109,000) of Incremental Revenues over a 20-year span (the "Certification"); and

WHEREAS, the Authority has determined that the Project meets the minimum requirements for a Mixed Use Redevelopment Tax Increment Financing project pursuant to KRS 154.30-060; and

WHEREAS, the Authority has determined the amount of Approved Infrastructure Costs, identified specific State Tax Revenues pledged for Incremental Revenues (as defined below), set forth the percentage of the pledged Incremental Revenues that will be payable to the Agency (the "Increment") and identified a particular footprint and discreet assets and improvements within the footprint of the Project that are eligible for incentives pursuant to the terms of this Agreement; and

WHEREAS, the total cost of the Project is estimated at One Hundred Fifty-Five Million and 00/100 Dollars (\$155,000,000), and the Authority has determined that the Commonwealth's participation in the Project shall be limited to the pledge of State Tax Revenues to support the Approved Public Infrastructure Costs (as defined below) of the Project, as described in Exhibit A to this Agreement, in an amount not to exceed Twenty-Four Million, One Hundred Nine Thousand and 00/100 Dollars (\$24,109,000); and

WHEREAS, the Authority adopted Resolution No. TIF-F-14-01 (the "Resolution") on September 25, 2014 granting final approval to the Commonwealth's participation in the Project and authorizing the execution and delivery of this Agreement by and between the Authority and the Agency, setting for the terms and conditions for the Commonwealth's participation in the Project and the payment of Increments (as defined below) to the Agency; and

NOW, THEREFORE, in consideration of the premises and the terms and conditions hereinafter set forth, the parties to this Agreement hereby agree as follows:

## SECTION 1 DEFINITIONS

In addition to the terms defined in the above recitals, the following additional terms used in this Agreement shall have the meanings assigned in this Section 1 unless the context clearly indicates that a contrary meaning is intended.

1.1 "Account Numbers" shall have the meaning set forth in Section 3.1 of this Agreement.

1.2 “Activation Date” means the date on which the time period for the pledge of Incremental Revenues shall commence and shall be set within two years from the Commencement Date (as defined below), unless the Authority approves an extension to the deadline to establish the Activation Date, in which case the Activation Date must be set within four years of the Commencement Date. The Activation Date shall be established in accordance with the terms of Section 4.2 of this Agreement.

1.3 “Approved Public Infrastructure Costs” means the costs described in KRS 154.30-010(3) that were incurred within the Footprint and that were reviewed and approved by the Authority for recovery from the available Increment. The Approved Public Infrastructure Costs are identified with particularity in Exhibit A, which is incorporated into this Agreement by reference, and shall not exceed Twenty-Four Million, One Hundred Nine Thousand and 00/100 Dollars (\$24,109,000), as set forth in section 4.1 of this Agreement.

1.4 “Annual Termination Date” means December 31 of each year, beginning with the year of the Activation Date, and each December 31 thereafter during the term established by Section 6 of this Agreement.

1.5 “Area Business” means (i) a holder of a Kentucky sales tax permit collecting and/or remitting sales tax within the Footprint pursuant to KRS 139.200 or (ii) an employer (as that term is defined in KRS Chapter 141) with a Physical Presence Within the Increment Footprint, or (iii) an Individual, Corporation, Sole Proprietorship or Pass-Through Entity with a Physical Presence Within the Footprint.

1.6 “Cabinet” means the Cabinet for Economic Development.

1.7 “Capital Investment” means:

(a) Obligations incurred for labor and to contractors, subcontractors, builders and materialmen in connection with the acquisition, construction, installation and equipping of the Project;

(b) The cost of acquiring land or rights in land within the development area on the Footprint of the Project, and any cost incident thereto, including recording fees;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation and equipping of the Project which is not paid by the contractor or contractors or otherwise provided;

(d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping and rehabilitation of the Project;

(e) All costs that are required to be paid under the terms of any contract(s) for the acquisition, construction, installation, equipping and rehabilitation of the Project; and

(f) All other costs of a nature comparable to those described in paragraphs (a) through (e), above, that are incurred relative to improvements within the Footprint.

1.8 “Corporation” is defined in Section 7701(a)(3) of the Internal Revenue Code.

1.9 “Commencement Date” shall mean September 25, 2014.

1.10 “Footprint” means the actual perimeter of the Project and is identified and described in Exhibit B - Development Area and State Footprint Map, which is incorporated into this Agreement by reference. The Parties acknowledge that the Footprint of a Mixed-Use Redevelopment in Blighted Urban Areas Tax Increment Financing project may not include any retail establishment that exceeds 20,000 square feet of finished square footage. The development plan presented to the Authority includes three retail establishments that will be located within the outer perimeter of the Project Footprint, but which may not be part of the Project Footprint because they exceed the 20,000 square foot limitation. The exact location of these retail sites within the overall development is not known at this time. Once the precise location of the retail establishments is known, the Agency will provide the Authority with a legal description of each ineligible retail location, and Exhibit B to this Agreement shall be supplemented so that the description of the Footprint will identify the location of these excluded retail establishments with particularity.

1.11 “Increment” means eighty percent (80%) of Incremental Revenues, which is the amount payable to the Agency if all conditions contained in this Agreement have been met.

1.12 “Incremental Revenues” means the amount of revenues received by the Commonwealth as determined by subtracting Old Revenues from New Revenues in a calendar year with respect to the Footprint of the Project.

1.13 “New Revenues” means the amount received by the Commonwealth with respect to:

- (a) Sales Taxes attributed to sales within the Footprint;
- (b) Ad Valorem Property Taxes on real property located within the Footprint;
- (c) Income Taxes that are paid by any employee of an Area Business in the form of withholding tax pursuant to KRS Chapter 141, and attributable to work or services performed within the Footprint, or within and without the Footprint if the services performed without the Footprint is incidental to the Area Employee’s service within the Footprint;

in the first year after the Activation Date or any year thereafter. The projected New Revenues for the Project are attached as Exhibit C – Projected New Revenues to this Agreement.

1.14 “New Revenues Determination” shall have that meaning as set forth in Section 4.6 of this Agreement.

1.15 “Old Revenues,” for calendar year 2013 (the “Base Year”), is equal to the amount determined in Section 4.5 of this Agreement. The Old Revenues shall be adjusted each calendar year after the Base Year by adding the Old Revenues calculated for the previous calendar year, multiplied by the CPI, to the amount of Old Revenues calculated for the previous calendar year. This adjusted amount is the Old Revenues for the current calendar year.

1.16 “Project” shall mean The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing project as defined in the above recitals and described in Exhibit A, which is incorporated into this Agreement by reference. Within sixty (60) days of finalizing the development plan for the Project, and the location of the commercial, residential and retail improvements summarized in Exhibit A are known, the Agency shall supplement Exhibit A to this Agreement with a diagram of The Summit Lexington Development Area (as defined above) indicating the location of each commercial, residential and retail improvement that will be constructed within the development area, and including the block reference annotations needed for the reports required by Sections 3.2 and 3.3 of this Agreement. The Authority reserves the right to review the tendered diagram for conformity with the Project otherwise described in Exhibit A and to reject the diagram if the Authority determines that the tendered diagram is inconsistent with Project otherwise described in Exhibit A. Upon the Authority’s acceptance, the diagram submitted shall be incorporated into Exhibit A and included in the definition of the “Project” pursuant to this section.

1.17 “Termination Date” shall be determined pursuant to Section 6 of this Agreement, and shall be the earlier of: (i) the Annual Termination Date (as defined above), provided that written notice is provided in accordance with Section 6 of this Agreement, (ii) the 20<sup>th</sup> anniversary of the date specified on the executed Notice of Activation (Exhibit F) submitted by the Agency, or (iii) September 26, 2053, whichever is earlier.

1.18 “Total Approved Cost” means the maximum amount of Approved Public Infrastructure Costs approved by the Authority for the Project and shall not exceed Twenty-Four Million, One Hundred Nine Thousand and 00/100 Dollars (\$24,109,000) as set forth in detail in Section 4 of this Agreement.

## SECTION 2 REPRESENTATIONS & WARRANTIES

2.1 Representations and Warranties of the Agency. The Agency hereby represents and warrants to the Commonwealth and the Authority as follows:

(a) Existence. The Agency is a department within the Lexington Fayette Urban County Government that has been designated to act on behalf of the LFUCG pursuant to this Agreement.

(b) Authority to Act. The Agency has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement, in accordance with its terms and conditions. The officers and officials executing and delivering this Agreement on behalf of the Agency have been or are otherwise duly authorized to enter into this Agreement on behalf of the LFUCG.

(c) Validity of Agreement; Compliance with Law. This Agreement is the legal, valid and binding obligation of the Agency and the LFUCG and is enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement, and the performance or observance by the Agency of the terms and conditions thereof, do not and will not materially violate any provisions of the LFUCG's Code of Ordinances, its regulations or any laws applicable to the LFUCG or the Agency.

(d) Litigation. No litigation or proceeding involving the LFUCG is pending or, to the best of the Agency's knowledge, is threatened in any court or administrative proceeding, which, if determined adversely to the LFUCG, could have a materially adverse impact on the ability of the Agency to perform any of its obligations under this Agreement.

(e) Conflicting Transactions. The consummation of the transactions contemplated hereby and the performance of the obligations of the Agency under and by virtue of this Agreement shall not result in any material breach of, or constitute a default under, any contract, agreement, lease, indenture, bond, note, loan or credit agreement to which the LFUCG is a party or by which the LFUCG is bound.

(f) Disclosure. This Agreement does not contain any false or misleading statement of or omission of any material fact.

(g) Development Area. The Development Area described in the Agency's application for the Commonwealth's participation in the Project meets the requirements of KRS 65.7049 and Ordinance No. 116-2013 presented as part of the application are consistent with the requirements of KRS 65.7053.

(h) Payment of Fees and Expenses. Pursuant to KRS 154.20-033(1), the Agency shall, within thirty (30) days from the billing date, pay the costs and expenses of all fiscal consultants, attorneys, appraisers, and other agents whom the Authority deems necessary or convenient for the preparation, execution, and delivery of this Agreement and any other documents which may be delivered in connection with this Agreement, including, without limitation, the fees and expenses of counsel employed on behalf of the Authority, and all costs and expenses, if any, in connection with the enforcement of this Agreement. The fees for services provided by persons employed on behalf of the

Authority shall be paid by the Agency directly to the person providing such consultation, advisory, legal, or other services. The Agency shall also pay by the date of execution of this Agreement the administrative fees due to the Authority.

2.2 Representations and Warranties of the Authority on behalf of the Commonwealth. The Authority hereby represents and warrants to the Agency as follows:

(a) Authority to Act. The Authority has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement in accordance with its terms and conditions. Each of the officials executing and delivering this Agreement on behalf of the Authority has been and is duly authorized to enter into this Agreement on behalf of the Commonwealth.

(b) Validity of Agreement; Compliance with Law. This Agreement is the legal, valid and binding obligation of the Authority and the Commonwealth enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement, and the performance or observance by the Commonwealth of the terms and conditions thereof, do not and will not violate any provisions of the Commonwealth's Constitution, or any laws applicable to the Commonwealth.

### SECTION 3 AGENCY'S COVENANTS

3.1 New Revenues Requirement. The Agency shall use reasonable efforts to have each Area Business maintain separate tax numbers for each business situs in the Footprint (the "Account Numbers") where the Area Business generates State Taxes as defined and indentified in Section 4.4 from locations or activities from both within and without the Footprint. The Account Numbers shall be used exclusively to report State Taxes received by the Commonwealth with respect to the Footprint.

3.2 Minimum Capital Investment.

(a) The Parties agree that the Minimum Capital Investment for the Project is Twenty Million Dollars (\$20,000,000) (the "Minimum Capital Investment"). The Minimum Capital Investment shall include all Capital Investment attributable to the Project on or after October 31, 2013.

(b) The date by which the Minimum Capital Investment is expected to occur is December 31, 2018 (the "Capital Investment Date").

(c) The Agency shall certify it has met the Minimum Capital Investment requirement on or before the Capital Investment Date by submitting Exhibit D within 30 days of the Capital Investment Date or as soon as the Minimum Capital Investment has been made, whichever occurs first.

3.3 Verification of Approved Public Infrastructure Costs. Beginning with the Commencement Date, the Agency shall submit a semi-annual Affidavit of Capital Investment, substantially in the form of Exhibit D, certifying to the Authority the Capital Investment made in the Project, and shall include a summary of the actual expenditures made with respect to Approved Public Infrastructure Costs during the previous six months (for example, the July 30, 2015 report would contain documentation pertaining to Capital Investment and Approved Public Infrastructure Costs during the six (6) month period beginning January 1, 2015 and ending June 30, 2015). The documentation shall clearly tie each expenditure made to a particular item of Approved Public Infrastructure Costs and shall include supporting detail, including the block and specific facility to which the expenditure was related. The Agency shall include documentation of other non-recoverable Capital Investment as well with similar detail. The Affidavit of Capital Investment shall be verified by an independent certified public accountant when: (i) the Minimum Capital Investment threshold is achieved, (ii) the investment in Approved Public Infrastructure Costs equals or exceeds Total Approved Costs, and (iii) the development of the Project is completed and the total expenditures for Capital Investment and Approved Public Infrastructure Costs have been made. The report required by this section shall be submitted by the Agency on a semi-annual basis throughout the Term of this Agreement until the Project is completed and the total expenditures for Capital Investment and Approved Public Infrastructure Costs have been made. The semi-annual report shall be made using a form substantially similar to Exhibit D attached to this Agreement.

3.4 Duplication Prohibited. Notwithstanding any other provision in this Agreement, the Agency shall not count any one cost in more than one category or attempt to recover the same cost more than once.

3.5 Net Positive Economic Impact of the Project. The Commonwealth's participation in the Project, and the disbursement of Increments pursuant to this Agreement, are contingent upon the Project resulting in a net positive economic impact to the Commonwealth. In the event that the scope or design of the Project is revised from the description provided in this Agreement, including Exhibit A, or if the completed construction of the Project does not adhere to the description of the Project provided in Exhibit A, the Authority reserves the right to: i) reevaluate the economic impact of the Project and to redetermine the Total Approved Costs and Approved Public Infrastructure Costs available for Increments, or ii) to declare the failure to construct the Project represented in Exhibit A to this Agreement an Event of Default and to pursue any of the remedies enumerated in Section 7.2 of this Agreement.

3.6 Request for Disbursement of Increment. The Agency shall submit all information required by this Section 3 as well as a Request for Disbursement in a form substantially similar to Exhibit E in order to be eligible for Increment disbursement as provided in Section 4.



SECTION 4  
ACTIVATION AND INCREMENT DISBURSEMENT

4.1 Total Approved Costs. The Authority has authorized a maximum of Twenty-Four Million, One Hundred Nine Thousand and 00/100 Dollars (\$24,109,000) for the support of the Approved Public Infrastructure Costs associated with the development of the Project. The Total Approved Costs shall be equal to the lesser of (i) Total Approved Costs as set forth herein, or (ii) the actual amount of Approved Public Infrastructure Costs expended, as verified by the Authority pursuant to Section 3.3 of this Agreement. The payment of Increments for the support of Approved Public Infrastructure Costs is contingent upon compliance with all terms of this Agreement.

4.2 Activation. The Activation Date is the date on which the time period for the pledge of Incremental Revenues shall commence and must be set within two years from the Commencement Date (as defined in Section 1.2 of this Agreement). To establish the Activation Date, the Agency shall notify the Authority by submitting the Notice of Activation attached as Exhibit F to this Agreement. The Authority may, at its sole discretion, approve the extension of the two-year period to establish the Activation Date to no more than four years from the Commencement Date in accordance with KRS 154.30-010(1) upon the submission by the Agency of the Activation Date Extension Request form attached as Exhibit G to this Agreement. The extension of the Activation Date period shall only be valid when the Activation Date Extension Request is approved and executed by any authorized signatory (as set forth in the KEDFA Bylaws) for the Office of the Secretary of the Cabinet for Economic Development or any authorized signatory (as set forth in the KEDFA Bylaws) for the Office of Financial Services, but formal action of the Authority shall not be required.

4.3 Increment Payment. Provided that the Minimum Capital Investment is confirmed by the Authority as set forth in Section 4.7, and the Project has activated in accordance with Section 4.2, and the Agency has incurred Approved Public Infrastructure Costs that have been verified by the Authority pursuant to Section 3.3, and the Agency has otherwise complied with the terms of this Agreement, the Commonwealth agrees to pay the Increment determined pursuant to Section 4 of this Agreement. The Agency shall be entitled to receive Increments for each calendar year during the Term of this Agreement (as defined in Section 6), beginning with the first calendar year after the calendar year in which the Activation Date occurs, until: (i) the date on which the aggregate Increment(s) paid to the Agency by the Commonwealth on a cumulative basis during the term of the Agreement equals the Total Approved Costs; (ii) the effective date of either Party's election to terminate this Agreement pursuant to Section 6; or (iii) there is an Event of Default pursuant to Section 7 of this Agreement. The Commonwealth shall have no obligation to make payments if there is no Increment available for distribution in any given year, or to pay more than the amount available for distribution. The recovery of Approved Costs and payment from the Commonwealth is contingent upon available Increment.

4.4 Increment. The amount of the Increment shall be eighty percent (80%) of Incremental Revenues (difference between New Revenues and Old Revenues) as defined in Section 1. Incremental Revenues shall include state revenues resulting from the following taxes:

- (a) Ad Valorem Property Taxes levied under KRS 132.020(1)(a) (the “Ad Valorem Property Taxes”);
- (b) Individual income taxes levied under KRS 141.020 that are paid by any employee of an Area Business in the form of withholding tax pursuant to KRS Chapter 141, and attributable to work or services performed within the Footprint, or within and without the Footprint if the services performed without the Footprint is incidental to the Area Employee’s service within the Footprint (“Income Taxes”); and
- (c) Sales taxes levied under KRS 139.200 (“Sales Taxes”)

(the taxes identified in this Section 4.4 shall be collectively referred to as the “State Taxes”) which were identified and approved by the Authority for the Project. The determination of Old Revenues and New Revenues shall be based upon the State Taxes identified in this Section 4.4 for the Project Footprint from the Commencement Date.

4.5 Old Revenue Determination. Because Incremental Revenues are measured by subtracting Old Revenues from New Revenues, a determination of Old Revenue is necessary prior to a distribution of the Increment. Notwithstanding anything in this Agreement to the contrary, before the Commonwealth shall be required to pay to the Agency any Increment to which the Agency shall be eligible for each year during the term of this Agreement, the Old Revenue Determination described in Section 5.4 of this Agreement must be calculated and set forth as Exhibit H to this Agreement. Exhibit H shall set forth the amounts which are deemed to be Old Revenue for the Base Year and shall set forth the CPI or other adjustments to be made annually.

4.6 New Revenue Determination. The projected New Revenues as set forth in the application are set forth in Exhibit C and are attached and incorporated herein. The requirements set forth in Section 4 shall be used by the Agency to calculate in each calendar year during the term of this Agreement, with reasonable accuracy, the amount of actual New Revenues for that calendar year (the “New Revenues Determination”). The Agency shall submit the New Revenues Determination in writing to the Authority for review, along with a report which includes (i) the name of each Area Business and (ii) all state tax account numbers used by each Area Business in connection with the Footprint.

4.7 Minimum Capital Investment. Notwithstanding anything in this Agreement to the contrary, the Agency shall not receive any disbursement of the Increment until the Minimum Capital Investment is confirmed. The Minimum Capital Investment shall be reported to the Authority on the form prescribed in Exhibit D of this Agreement. If the Minimum Capital Investment is not certified by the Capital Investment Date (pursuant to Section 3.3 of this Agreement), the Incremental Revenues shall be forfeited to the Commonwealth.

4.8 Request for Increment Disbursement. The submission by the Agency of complete and accurate information required under this Section along with a Request for Disbursement (substantially in the form of Exhibit E or other format acceptable to the Agency and the Authority) shall constitute a formal request for the Increment. The Authority, with assistance from the Department of Revenue, shall review and verify the information submitted and shall certify the verified amount pursuant to KRS 154.30-090.

4.9 Time of Payment. For each calendar year beginning with the calendar year after the calendar year in which the Activation Date occurs, ninety (90) days after the Authority notifies the Agency that the information submitted in connection with a Request for Disbursement of Increment is complete and in order, the Commonwealth agrees to pay to the Agency the Increment, provided that all conditions provided in Section 4 of this Agreement have been met.

4.10 Compliance Certification. Notwithstanding anything in this Agreement to the contrary, if the Authority has not notified the Finance and Administration Cabinet pursuant to KRS 154.30-090 that the Agency is in compliance with the terms of this Agreement, the Incremental Revenues shall not be disbursed until such time as the certification has been provided by the Authority.

4.11 Use of Increment. The Agency covenants and agrees that it will use the Increment received pursuant to this Agreement for the support of Approved Public Infrastructure Costs in connection with the Project. If the Increment is used to support notes, bonds or other debt obligations with respect to the Project, the Agency shall utilize the Increment received in a given year to (1) pay the current financing costs, and (2) maintain a fully funded reserve. Any excess beyond that used for the purposes in the preceding sentence shall be used to provide for the retirement or defeasance of all or a portion of the remaining financing costs secured by the Increment. If, as of the Termination Date, the Increment calculated and paid over the term of this Agreement is insufficient to pay off the notes, bonds or other debt obligations, the parties acknowledge and agree that neither the Authority nor the Commonwealth shall have any liability with regard to the remainder of the notes, bonds or other debt obligations. Within 120 days after the close of the preceding calendar year, the Agency shall provide an annual certification, substantially in the form of Exhibit I to this Agreement, verifying that the Increment(s) received pursuant to this Agreement during the preceding year were used for the support of the Approved Public Infrastructure Costs identified in Exhibit D. The Agency acknowledges and agrees that this disclosure shall be matter of public record that may be subject to disclosure to the General Assembly, provided in response to requests for public records pursuant to the Kentucky Open Records Act or published by the Authority at its sole discretion for the purpose of issuing public reports, publications or any other documentation that the Authority deems necessary.

SECTION 5  
OLD REVENUE

5.1 Base Year. The Base Year for the Project shall be 2013, the last calendar year ending prior to the Commencement Date. Upon receipt of the information required in Section 5.3 and 5.4, the Authority shall determine, in consultation with the Department of Revenue, whether the Base Year is a true and accurate depiction of historic revenues for the Footprint. Pursuant to KRS 154.30-010(23), the Authority may consider the three years prior to the Commencement Date (the “Three Year Base”) as an alternative to a single Base Year.

5.2 Old Revenue Adjustment. The Old Revenues shall be adjusted each year by the percentage increase, if any, of the CPI or a comparable index, or an alternative percentage increase determined appropriate by the Authority as set forth in KRS 154.30-010.

5.3 Agency’s Requirements. The Agency shall calculate with reasonable accuracy the Old Revenues for the Base Year, and in doing so, the Agency may make such assumptions as may reasonably be required, so long as those assumptions are properly documented and supported. The Agency shall submit its calculations of the Old Revenues for the Base Year to the Authority for review and approval, along with a report including; (i) the name of each Area Business, and (ii) all state tax account numbers used by each Area Business in connection with the Increment Footprint.

5.4 Determination of Old Revenue. The Authority shall review the information submitted by the Agency with regard to Old Revenues and shall determine, in consultation with the Department of Revenue, the amounts which are deemed to be Old Revenue for the Base Year and indicate any applicable annual adjustments. The determination of Base Year, Old Revenues and annual adjustments shall be set forth in Exhibit H and incorporated into this Agreement. Neither the amount set forth as Old Revenue for the Base Year nor the set adjustment shall be subject to change without a written Amendment to this Agreement executed by the parties hereto.

SECTION 6  
TERM

The term of this Agreement shall begin on the Commencement Date (as defined in Section 1 of this Agreement). The Agreement shall then automatically renew for nineteen (19) consecutive years pursuant to KRS 154.30-070 beginning with the first Annual Termination Date, unless either party gives written notice of their desire to discontinue the Project at least sixty (60) days prior to the Annual Termination Date during any year. Notwithstanding the above, in no event shall the term of this Agreement extend beyond September 26, 2053.

SECTION 7  
DEFAULT

7.1 Events of Default. Each of the following events or occurrences shall constitute an "Event of Default" under this Agreement:

(a) Bankruptcy. If there is filed by or against the Agency a petition in bankruptcy, or a petition for the appointment of a receiver or trustee, and any such petition is not dismissed within sixty (60) days after the date of filing, or if the Agency files a petition for reorganization under any of the provisions of the Bankruptcy Code or any similar Law, or if the Agency makes a general assignment for the benefit of creditors, or if the Agency makes any insolvency assignment or is adjudicated insolvent by any court of competent jurisdiction; or

(b) Covenants, Warranties and Representations. If any warranty or representation made by the Agency in this Agreement shall at any time be false or misleading in any material respect, or the Agency shall fail to keep, observe or perform any of the terms, covenants, representations or warranties set forth in this Agreement or is unable or unwilling to meet its obligations thereunder; or

(c) Obligations to the Authority. If the Agency shall fail to observe, perform or comply with the terms, obligations, covenants, agreements, conditions or other provisions of this Agreement or any other agreement, document or instrument related to the Project; or

(d) Failure To Construct the Project. If the Capital Improvements and Approved Public Infrastructure Costs associated with the Project (as represented by the Agency in this Agreement and the attached exhibits in order to obtain the Commonwealth's support for the Project) are not completed, or the design and scope of the Project is changed without the prior approval of the Authority in accordance with section 8.5 of this Agreement.

7.2 Remedies of the Authority Upon Events of Default. Notwithstanding anything to the contrary set forth herein, upon the occurrence of an Event of Default, the Authority, in its sole discretion and without notice to the Agency, may at any time exercise any one or more of the following rights and remedies:

(a) the right to suspend all or a portion of the Increment payment with the exception of the portion of the Increment necessary for payment of Increment Bonds (as defined in KRS 154.30-010) or securing of Increment Bonds in which case suspension is prohibited by KRS 154.30-070(1)(h);

(b) the right to seek an appropriate legal or equitable action to enforce the Agency's performance of the terms, covenants and conditions of this Agreement; and/or

(c) the right to re-determine the Approved Costs available for Increments; and/or

(d) the right to revoke the Commonwealth's participation in the Project; and/or

(e) in the event of a false or misleading representation or warranty, the right to recover Increments previously paid; and/or

(f) termination of the Agreement; and/or

(g) the right to exercise any other rights or remedies that may be available to Authority pursuant to this Agreement or under applicable laws, including the recovery of previously disbursed Increments; and/or

7.3 Increment Bonds. Notwithstanding Section 7.1 and the default remedies of Section 7.2, KRS 154.30-070(1)(h) prohibits the withholding by any party to this Agreement of any incremental revenues if Increment Bonds (as defined in KRS 154.30-010) are outstanding that are secured by a pledge of those incremental revenues.

## SECTION 8 MISCELLANEOUS

8.1 Notices. All notices or other communications hereunder from any party shall be sufficiently given, and shall be deemed given, when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the other parties at their respective addresses as follows:

If to Commonwealth

Or the Authority: Kentucky Economic Development Finance Authority  
Old Capitol Annex  
300 West Broadway  
Frankfort, KY 40602  
Attn: Chair

If to the Agency:

Lexington-Fayette Urban County Government,  
Department of Finance  
200 East Main Street  
Lexington, Kentucky 40507  
Attn: Cynthia Schuster

8.2 Binding Effect. This Agreement shall be binding upon the Parties hereto and upon their respective successors and assigns.

8.3 Severability. If any clause, provision, or section of this Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision, or section shall not affect any of the remaining clauses, provisions or sections hereof.

8.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and enforceable in courts of competent jurisdiction.

8.5 Entire Agreement; Modifications. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter of this Agreement and shall not be modified, amended, cancelled or terminated except by an agreement in writing signed by the Parties. If the Agency has reason to request an amendment during the Term of the Agreement, it may submit a written request setting forth the need for the amendment and requesting approval of same. Upon submission of a written request, such amendment will be subject to the express, prior written consent of the Authority.

8.6 Counterparts. This Agreement may be executed in any number of counterparts by some or all of the parties hereto, each of which shall be an original and all of which shall together constitute one and the same instrument.

8.7 Further Assurances. Each of the Parties hereto shall use reasonable efforts and cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

8.8 Mutual Termination. In addition to any other provisions relating to termination of this Agreement contained herein, this Agreement shall terminate upon the written agreement of all the parties hereto.

8.9 Sections. References to "Sections" shall be to sections of this Agreement, unless otherwise expressly designated.

8.10 Section Headings. Section headings are for reference only and shall have no interpretative weight or value.

8.11 Plural. The plural and singular form of words shall import either or both a plural and/or singular meaning, as the case may be.

8.12 Jurisdiction and Venue. The Parties hereto agree that any suit, action or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, (a) the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, or (b) the United States District Court for the Eastern District of Kentucky, Frankfort Division, and the parties hereby submit to the jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgment and waive any

other preferential jurisdiction by reason of domicile. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or related to this Agreement brought in the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Frankfort Division, and also hereby irrevocably waive any claim that any such suit, action or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum.

8.13 Disclosure of Information and Reports. The Agency by execution of this Agreement hereby authorizes and agrees that any information reported to the Authority in any Exhibit to this Agreement may be disclosed in any public forum, report or documentation deemed beneficial to public interest, with the exception of information that is not a public record or is confidential under Kentucky law.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

**“Agency”**

**LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT, DEPARTMENT OF  
FINANCE**

By: William O'Mara

Name: William O'Mara

Title: Commissioner of Finance

**“Authority”**

**KENTUCKY ECONOMIC DEVELOPMENT  
FINANCE AUTHORITY FOR THE  
COMMONWEALTH OF KENTUCKY**

By: Katie Smith

Name: Katie Smith

Title: Executive Director

## INDEX OF EXHIBITS

Exhibit A	Project Description
Exhibit B	Development Area and State Footprint Map
Exhibit C	Projected State New Revenues
Exhibit D	Affidavit of Capital Investment and Approved Public Infrastructure Costs
Exhibit E	Request For Disbursement
Exhibit F	Notice of Activation
Exhibit G	Activation Deadline Extension Request
Exhibit H	Old Revenues
Exhibit I	Certification of Increment Use

**EXHIBIT A**  
**THE SUMMIT LEXINGTON MIXED-USE DEVELOPMENT TAX INCREMENT**  
**FINANCING PROJECT DESCRIPTION**

The Summit Lexington Project is a 60.29 acre mixed-use redevelopment located on the corner of Nicholasville Road and Man O' War Boulevard in Fayette County, Kentucky. This mixed-use development will include retail, residential, restaurants and commercial office space. The total cost of the project is estimated to be \$404,149,709.

The Development Area lacks the utilities, walkways, public parking and sanitary and storm sewer infrastructure necessary to comply with a community-wide court decree mandating corrective action by the local government and to alleviate the significant storm water runoff from adjacent properties on Nicholasville Road. These factors drive the cost of Public Infrastructure associated with redevelopment of the Development Area.

The project will consist of the following:

- 20 Separate Buildings
- Over 400,000 square feet of Restaurant and Retail
- 400 residential units (approximate square footage of 417,000)
- Nearly 2,500 parking spaces
- Approximately 11,000 square feet of commercial office space

Initial Public Infrastructure needs were \$26,513,240. Cost fluctuations in construction materials have increased Public Infrastructure costs to \$31,457,397.

Revised Public Infrastructure:

Land preparation	\$ 4,295,528.00
Sewers/Storm drainage	3,596,282.00
Curbs, sidewalks, promenades and pedways	4,603,687.00
Roads	2,139,090.00
Provision of utilities	2,431,524.00
Environmental remediation	455,509.00
Public spaces or parks	1,482,377.00
Parking	9,593,637.00
Other	<u>2,859,763.00</u>
Total Estimated Public Infrastructure Costs	\$31,457,397.00

After negotiations between KEDFA staff and LFUCG representatives, the costs available for recovery through Tax Increment Financing are as follows:

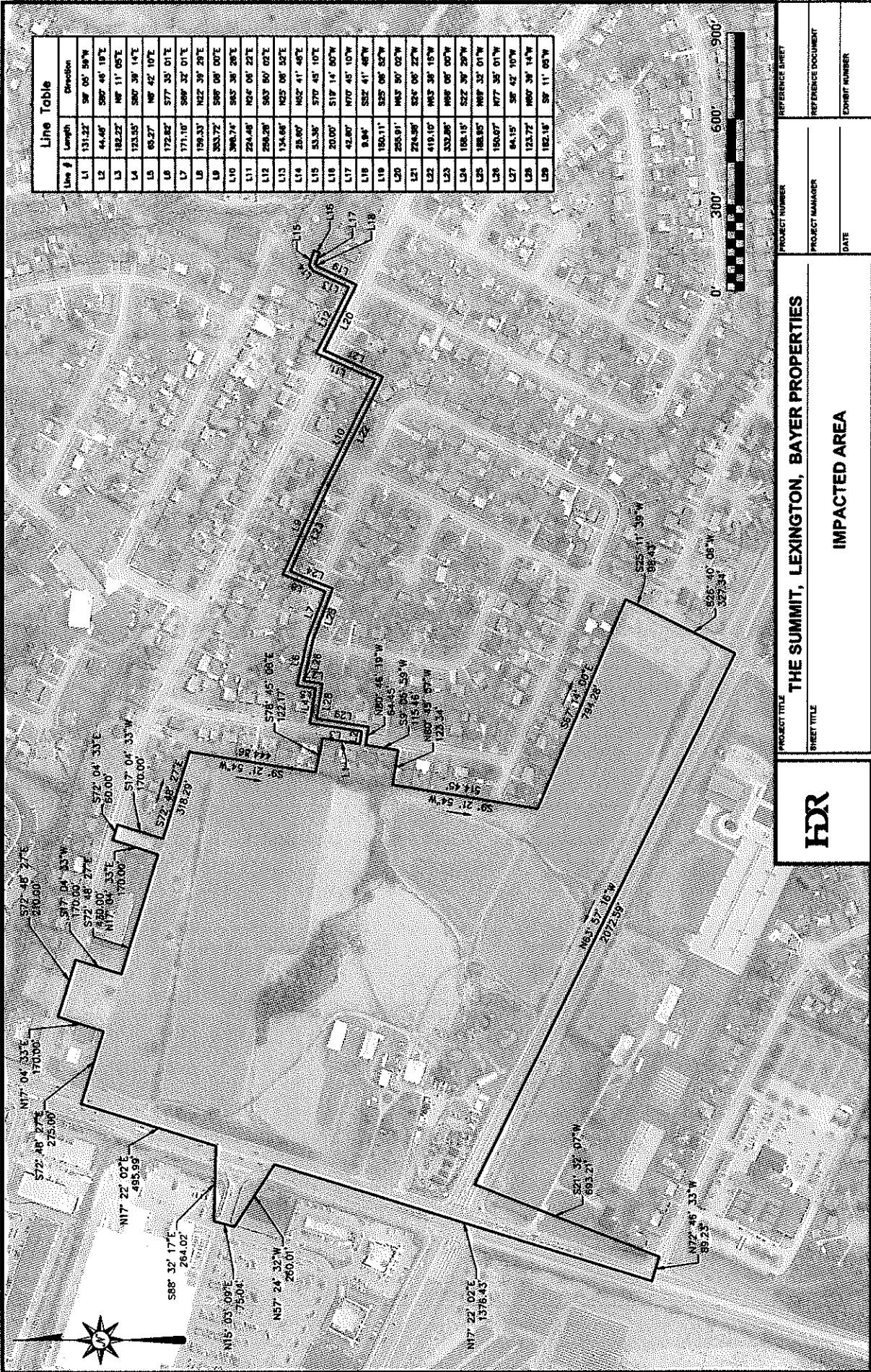
Public Infrastructure	\$ 24,109,000
Total Costs Approved for State TIF Recovery	\$ 24,109,000

Total Costs Approved for TIF Recovery shall not exceed \$24,109,000, the amount of the net new positive economic impact to the Commonwealth estimated in the consultant's report.

**EXHIBIT B**

**THE SUMMIT LEXINGTON MIXED-USE  
REDEVELOPMENT TAX INCREMENT FINANCING PROJECT  
DEVELOPMENT AREA AND STATE FOOTPRINT**

Line Table		
Line #	Length	Direction
L1	131.22'	S8° 05' 58"W
L2	44.46'	S87° 46' 19"E
L3	182.22'	N6° 11' 05"E
L4	123.55'	S87° 38' 14"E
L5	69.27'	N6° 42' 10"E
L6	172.82'	S77° 35' 01"E
L7	171.10'	S88° 32' 01"E
L8	199.33'	N22° 39' 29"E
L9	353.72'	S88° 08' 00"E
L10	366.74'	S85° 38' 26"E
L11	224.48'	N24° 04' 22"E
L12	258.26'	S85° 50' 02"E
L13	134.68'	N25° 08' 52"E
L14	28.00'	N62° 41' 48"E
L15	53.38'	S77° 45' 10"E
L16	20.00'	S19° 14' 58"W
L17	42.80'	N77° 45' 10"W
L18	8.84'	S52° 41' 46"W
L19	150.11'	S25° 08' 52"W
L20	255.91'	N43° 50' 05"W
L21	224.56'	S26° 08' 22"W
L22	419.10'	N43° 38' 15"W
L23	333.26'	N48° 08' 00"W
L24	168.15'	S22° 36' 29"W
L25	188.85'	N48° 32' 01"W
L26	150.07'	N77° 50' 10"W
L27	84.15'	S6° 42' 10"W
L28	123.72'	N67° 38' 14"W
L29	182.18'	S8° 11' 05"W



PROJECT NUMBER	REFERENCE SHEET
PROJECT MANAGER	REFERENCE DOCUMENT
DATE	EXHIBIT NUMBER

PROJECT TITLE: **THE SUMMIT, LEXINGTON, BAYER PROPERTIES**

SHEET TITLE: **IMPACTED AREA**



## **Legal Description of the TIF Boundary**

Beginning at a point in the centerline of Nicholasville Road approximately 170' south of the intersection of the centerline of Nicholasville Road and East Tiverton Way. Thence leaving the centerline of Nicholasville Road (US Hwy No. 27)  $S72^{\circ}48'27''E$  a distance of 75.00 feet to a point in the east right of way line of Nicholasville Road and being the northwest corner of the Fritz property and the southwest corner of Devondale Subdivision, Unit 1-A, Plat Cabinet C Slide 774. Thence in an easterly direction with the north property line of the Fritz property and the south boundary of Devondale Subdivision Unit 1-A  $S72^{\circ}48'27''E$  a distance of 275.00 feet to a point in the boundary between the Fritz property and Devondale Subdivision, Unit 1-A, corner to lots 1 and 2 of said Devondale Subdivision, Unit 1-A. Thence leaving the Fritz property boundary and following the property line between Lot 1 and Lot 2,  $N17^{\circ}04'33''E$  a distance of 135.00 feet to a point being the corner between Lot 1 and Lot 2 in the south right of way of East Tiverton Way. Thence leaving the south right of way of East Tiverton Drive in a northerly direction  $N17^{\circ}04'33''E$  a distance of 35.00 feet to the centerline of East Tiverton Drive. Thence with the centerline of East Tiverton Way  $S72^{\circ}48'27''E$  ( $S 73^{\circ}38' E$  by plat) a distance of 210.00 feet to a point. Thence leaving the centerline of East Tiverton Way  $S17^{\circ}04'33''W$  ( $S 16^{\circ}15' W$  by plat) a distance of 35.00 feet to a point in the southerly right of way line of East Tiverton Way and being the property corner between Lot 4 and Lot 5, Block B, Unit 1-A, Devondale Subdivision, Plat Cabinet C Slide 774. Thence leaving the southerly right of way line of East Tiverton Way with the boundary between Lots 4 and 5,  $S17^{\circ}04'33''W$  a distance of 135.00 feet to a point in the north boundary of the Fritz property and being the property corner between Lots 4 and 5. Thence with the north property line of the Fritz property and the south boundary of Devondale Subdivision Unit 1-A  $S72^{\circ}48'27''E$  a distance of 430.00 feet to a point in the west right-of-way of Tavistock Drive. Thence with the west right-of-way of Tavistock Drive and continuing to the centerline of East Tiverton Way  $N17^{\circ}04'33''E$  a distance of 170.00 feet. Thence with the centerline of East Tiverton Way  $S72^{\circ}04'33''E$  a distance of 60.00 feet. Thence  $S17^{\circ}04'33''W$  and continuing with the east right-of-way of Tavistock Drive a distance of 170.00 feet to a point in the north property boundary of the Fritz property and being the southwest corner of Lot 1, Block H of Devondale Subdivision Unit 1-A. Thence with the north property line of the Fritz property and the south boundary of Devondale Subdivision Unit 1-A  $S72^{\circ}48'27''E$  a distance of 318.29 feet the northeast corner of the Fritz property, said point also being the northwest corner of Lot 6 of Unit 1-B of the Devondale Subdivision, Plat Cabinet C Slide 755; thence with the boundary of Unit 1-B of the Devondale Subdivision and the Fritz east property line  $S 9^{\circ}21'54''W$  a distance of 444.36 feet to a point in the Fritz property/Devondale Subdivision Unit 1-B property line and the approximate corner between lots 11 and 12 Block H, Unit 1-B of the Devondale Subdivision. Thence with the approximate line between lots 11 and 12, Block H, Unit 1-B of the Devondale Subdivision  $S78^{\circ}45'06''E$  a distance of 122.17 feet to a point in the west right-of-way of Walhampton Drive. Thence with the west right-of-way of Walhampton Drive  $S 9^{\circ}05'59''W$  a distance of 131.22 feet to a point in the west right-of-way of Walhampton Drive.

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

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

## EXHIBIT C

### THE SUMMIT LEXINGTON MIXED-USE REDEVELOPMENT TAX INCREMENT FINANCING PROJECT

#### PROJECTED NEW STATE REVENUE

29. State Tax Increment Estimates							
Year	Ad Valorem Real Estate Property Tax	Sales and Use Tax	Withholding Tax	Corporation Income Tax	Limited Liability Entity Tax	Total	Incremental Revenues 80%
1	\$189,613	\$4,613,400	\$761,660	\$74,858	(i)	\$5,639,530	\$4,511,624
2	\$195,301	\$4,751,802	\$784,509	\$77,103	(i)	\$5,808,715	\$4,646,972
3	\$201,160	\$4,894,356	\$808,045	\$79,416	(i)	\$5,982,977	\$4,786,382
4	\$207,195	\$5,041,187	\$832,286	\$81,799	(i)	\$6,162,466	\$4,929,973
5	\$213,411	\$5,192,422	\$857,254	\$84,253	(i)	\$6,347,340	\$5,077,872
6	\$219,813	\$5,348,195	\$882,972	\$86,780	(i)	\$6,537,760	\$5,230,208
7	\$226,407	\$5,508,641	\$909,461	\$89,384	(i)	\$6,733,893	\$5,387,115
8	\$233,199	\$5,673,900	\$936,745	\$92,065	(i)	\$6,935,910	\$5,548,728
9	\$240,195	\$5,844,117	\$964,847	\$94,827	(i)	\$7,143,987	\$5,715,190
10	\$247,401	\$6,019,441	\$993,793	\$97,672	(i)	\$7,358,307	\$5,886,646
11	\$254,823	\$6,200,024	\$1,023,607	\$100,602	(i)	\$7,579,056	\$6,063,245
12	\$262,468	\$6,386,025	\$1,054,315	\$103,620	(i)	\$7,806,428	\$6,245,142
13	\$270,342	\$6,577,605	\$1,085,944	\$106,729	(i)	\$8,040,621	\$6,432,496
14	\$278,452	\$6,774,933	\$1,118,523	\$109,931	(i)	\$8,281,839	\$6,625,471
15	\$286,806	\$6,978,181	\$1,152,078	\$113,229	(i)	\$8,530,294	\$6,824,236
16	\$295,410	\$7,187,527	\$1,186,641	\$116,626	(i)	\$8,786,203	\$7,028,963
17	\$304,272	\$7,403,153	\$1,222,240	\$120,124	(i)	\$9,049,789	\$7,239,831
18	\$313,401	\$7,625,247	\$1,258,907	\$123,728	(i)	\$9,321,283	\$7,457,026
19	\$322,803	\$7,854,005	\$1,296,674	\$127,440	(i)	\$9,600,922	\$7,680,737
20	\$332,487	\$8,089,625	\$1,335,575	\$131,263	(i)	\$9,888,949	\$7,911,159
Total	\$5,094,960	\$123,963,786	\$20,466,076	\$2,011,449	(i)	\$151,536,270	\$121,229,016

(i) Limited Liability Entity Tax and Corporate Income Tax are combined.



## EXHIBIT D

### **Affidavit of Capital Investment and Approved Public Infrastructure Costs**

The Department of Finance for the Lexington-Fayette Urban County Government (the "Agency," as defined in the Agreement) shall submit this Affidavit of Capital Investment and Approved Public Infrastructure Costs Exhibit for the The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing Project semi-annually by January 30<sup>th</sup> and July 31<sup>st</sup> each year throughout the Term of this Agreement until the Minimum Capital Investment is made, pursuant to Section 3 of the Tax Incentive Agreement dated September 25, 2014 (the "Agreement"). Once the Minimum Capital Investment is achieved, this report shall be filed annually on July 31<sup>st</sup> of each year. The Affidavit of Capital Investment and Approved Public Infrastructure Costs shall be accompanied by the attached Exhibit D-1 – Certificate of Independent Public Accountants of Capital Investment when: (i) the \$20,000,000 Minimum Capital Investment Threshold has been reached, (ii) the investment in Approved Public Infrastructure Costs equals or exceeds Total Approved Costs, or total expenditures for Approved Public Infrastructure Costs are completed, whichever occurs first, and (iii) the development of the Project is completed and the total expenditures for Capital Investment and Approved Public Infrastructure Costs have been made.

The undersigned, \_\_\_\_\_, after having first being duly sworn, deposes and states as follows:

As \_\_\_\_\_ (Title) of the Agency, I am authorized to submit this Affidavit to the Kentucky Economic Development Finance Authority ("Authority") on behalf of the Agency with respect to the Tax Incentive Agreement by and between the Authority and the Agency ("Agreement"). All capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in the Agreement.

As of \_\_\_\_\_, 20\_\_, the Agency is reporting the following:

#### **Summary of the Total Capital Investment Made To-Date Within the Footprint**

Block	Public Infrastructure Costs	Other Capital Investment	TOTAL
1	\$	\$	\$
2			
3			
4			
5			
6			
7			
8			
9			
10			
<b>TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

*See Attachment 1 for detail of the investment costs.*

Has the Minimum Capital Investment Threshold of \$20,000,000 been achieved? \_\_\_ YES \_\_\_ NO  
If yes, it was achieved on: \_\_\_\_\_, 20\_\_

Has there been any changes or modifications to the proposed project as described in Exhibit A to the Tax Incentive Agreement? \_\_\_ YES \_\_\_ NO If yes, please list the changes below by block:

Block #	New Description

Please Note: Failure to build out the project as described in the application and reflected in Exhibit A to the Agreement may result in a default or a reduction in the Commonwealth's participation in the Project and the amount of any Increment(s) payable.

The amounts reported in this affidavit are true and accurate to the best of my knowledge. Evidence of the amounts reported is kept by the Agency and is available for review by a representative of the Authority at any time pursuant to the Agreement.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT, DEPARTMENT OF  
FINANCE

\_\_\_\_\_  
[Signature of Individual]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Date]



**EXHIBIT D-1**

**Certificate of Independent Public Accountants  
of Capital Investment**

The Department of Finance for the Lexington-Fayette Urban County Government's (the "Agency," as defined in the Agreement) Affidavit of Capital Investment Exhibit for the The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing Project must be certified by an independent CPA at the following dates when: (i) the \$20,000,000 Minimum Capital Investment Threshold has been reached, (ii) the investment in Approved Public Infrastructure Costs equals or exceeds Total Approved Costs, and (iii) the development of the Project is completed and the total expenditures for Capital Investment and Approved Public Infrastructure Costs have been made.

The undersigned, being the independent certified public accountants for the Agency, hereby certify as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, to the Kentucky Economic Development Finance Authority (the "Authority") that after reasonable due diligence they have determined as follows:

- 1) The aggregate amount of Capital Investment (as defined in the Agreement), Approved Public Infrastructure Costs (as defined in the Agreement) and Other Costs paid since the Commencement Date of the Project through \_\_\_\_\_, 20\_\_, is:

<b>Public Infrastructure Costs</b>	<b>Other Capital Investment</b>	<b>TOTAL</b>
\$ _____	\$ _____	\$ _____

- 2) The Minimum Capital Investment Threshold of \$20,000,000 was achieved on \_\_\_\_\_, 20\_\_. The final capital investment for the Project was incurred on \_\_\_\_\_, 20\_\_.
- 3) The aggregate amount of capital investment costs incurred since the commencement of the Project were for the Project as described in Exhibit A to the Tax Incentive Agreement.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT, DEPARTMENT OF  
FINANCE

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT E**  
**Request for Disbursement**  
The Summit Lexington Mixed-Use Redevelopment  
Tax Increment Financing Project

This Exhibit must be submitted by April 30<sup>th</sup> of each year to make a Request for Disbursement of the Increment for the preceding calendar year. Provided that the Minimum Capital Investment is confirmed by the Authority as set forth in Section 4.7 of the Agreement, and the Project has activated in accordance with Section 4.2 of the Agreement, and the Agency has incurred Approved Public Infrastructure Costs that have been verified by the Authority pursuant to Section 3.3 of the Agreement, and the Agency has otherwise complied with the terms of the Agreement, the Cabinet for Economic Development will forward this request for disbursement to the Department of Revenue for further processing. Please note any available increments will be held in escrow pending certification that the \$20,000,000 Minimal Capital Investment threshold has been reached. The failure to achieve the Minimal Capital Investment threshold by December 31, 2016 will result in the forfeiture of all accrued Increment(s) to the Commonwealth.

For Business Taxpayers: This exhibit must be accompanied by the Tax Increment Financing Business Questionnaire for any business that operates within the footprint during the calendar year. Failure to provide the questionnaire for any businesses operating within the footprint will cause the Increment to be calculated without regard to the tax receipts from the noncompliant business.

**Tax Year Associated With Increment Request:** \_\_\_\_\_

**Increment Request:**           \$ \_\_\_\_\_

By signing this exhibit, the undersigned agrees that he or she has the proper authority to act on behalf of the Department of Finance for the Lexington-Fayette Urban County Government with regard to the Tax Incentive Agreement for The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing Project.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT, DEPARTMENT OF  
FINANCE

\_\_\_\_\_  
[Signature of Individual]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Date]

**EXHIBIT F**

**NOTICE OF ACTIVATION**

The undersigned, \_\_\_\_\_, after having first being duly sworn, deposes and states as follows:

As \_\_\_\_\_ (Title) of the Department of Finance for the Lexington-Fayette Urban County Government (the "Agency"), I am authorized to submit this Notice of Activation to the Kentucky Economic Development Finance Authority (the "Authority") on behalf of the Agency, as required by the Tax Incentive Agreement between the Authority and the Agency dated September 25, 2014 ("Agreement").

Pursuant to Section 4.2 of the Agreement, the Activation Date must be set on or before September 25, 2016, or, with the prior written approval of the Authority pursuant to an executed Activation Deadline Extension Request (Exhibit G), on or before September 25, 2018.

The Agency hereby designates \_\_\_\_\_, 20\_\_ as the Activation Date pursuant to Section 4.2 of the Agreement, which is within two years of the Commencement Date, or is within four years of the Commencement Date and the Agency has submitted an Activation Deadline Extension Request (Exhibit G to the Agreement) that was previously authorized by the Authority.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT, DEPARTMENT OF FINANCE

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me by \_\_\_\_\_, the \_\_\_\_\_ of the Department of Finance for the Lexington-Fayette Urban County Government, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
(SEAL)

**EXHIBIT G**

**ACTIVATION DEADLINE EXTENSION REQUEST**

The undersigned, \_\_\_\_\_, as \_\_\_\_\_ (Title) of the Department of Finance for the Lexington-Fayette Urban County Government (the "Agency"), I am authorized by the Agency to submit this request to the Kentucky Economic Development Finance Authority (the "Authority") on behalf of the Agency with respect to the Tax Incentive Agreement - TIF between the Authority and the Agency ("Agreement").

The Activation Date must be established within two years of September 25, 2014 pursuant to Section 4.2 of the Agreement. Section 4.2 allows the Agency to request a two-year extension of the deadline to establish the Activation Date by the submission of this Activation Deadline Extension Request, subject to the approval and execution of the request by the Authority. The Agency respectfully requests that the deadline for establishing the Activation Date of the Project (as defined in the Agreement) and for submitting the Notice of Activation (Exhibit F) be extended to September 25, 2018.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT, DEPARTMENT OF  
FINANCE

\_\_\_\_\_  
[Signature of Individual]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Date]

STATE OF: \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ [Title] of the Department of Finance for the Lexington-Fayette Urban County Government.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
(SEAL)

**Please submit this report to the following address:** Cabinet for Economic Development  
Division of Program Servicing  
Old Capitol Annex  
300 West Broadway  
Frankfort, Kentucky 40601

**AUTHORITY ACKNOWLEDGEMENT**

Pursuant to Section 4.2 of the Agreement, the Authority hereby consents to the extension of the deadline to establish the Activation Date to September 25, 2018.

Kentucky Economic Development Finance Authority

\_\_\_\_\_  
[Signature of Commissioner or Deputy Commissioner]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Date]



**Exhibit H**  
**Old Revenues (Base Year)**

The Summit Lexington Mixed-Use Redevelopment  
Tax Increment Financing Project

This Exhibit must be submitted by June 30, 2015. The Cabinet for Economic Development will forward the exhibit to the Department of Revenue for further processing. Upon completion of the review, the Department of Revenue will issue a certification detailing the base year amount for the State Taxes (as defined in the Agreement).

For Business Taxpayers: This exhibit must be accompanied by the Tax Increment Financing Business Questionnaires for any business that operates within the footprint during the calendar year. In addition to the required Questionnaires, the Agency must submit the Old Revenues (Base Year) Spreadsheet. Failure to provide the questionnaire for any businesses operating within the footprint will result in the potential increment available to be calculated without regards to the tax receipts from the noncompliant business.

By signing this exhibit, the undersigned agrees that he or she has the proper authority to act on behalf of the Department of Finance for the Lexington-Fayette Urban County Government with regard to the Tax Incentive Agreement for The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing project. I certify that this exhibit has been calculated using sound accounting principles and is subject to review and audit by the commonwealth or assigned agent.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT, DEPARTMENT OF  
FINANCE

\_\_\_\_\_  
[Signature of Individual]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Date]

STATE OF: \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ [Title] of the Department of Finance for the Lexington-Fayette Urban County Government.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
(SEAL)

**Please submit this report to the following address:**

Cabinet for Economic Development  
Division of Program Servicing  
Old Capitol Annex  
300 West Broadway  
Frankfort, Kentucky 40601

## Exhibit H - Estimated Old Revenues (Base Year)

Real Estate Property Tax                      \$ \_\_\_\_\_

Assumptions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Individual Income Tax                      \$ \_\_\_\_\_

Assumptions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Sales Tax    \$ \_\_\_\_\_

Assumptions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# Tax Increment Financing (TIF) Business Questionnaire

For Official Use Only

Block Number \_\_\_\_\_  
Local Agent Initials \_\_\_\_\_

This form is distributed by the local TIF development authority for use in determining amounts eligible for TIF. The form must be completed by all businesses operating within the state footprint of an approved TIF project and returned to the local TIF development authority. If you have any questions, please contact the local TIF development authority.

Business Name: \_\_\_\_\_

DBA (If Applicable): \_\_\_\_\_

Location Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Date operations began at this location \_\_\_\_ / \_\_\_\_ / \_\_\_\_

## Tax Identification Numbers (If Applicable):

FEIN or SSN \_\_\_\_\_

KY Corporation Tax \_\_\_\_\_  Check Box If Multiple Locations File Under This Tax ID  
For Corporation Income Tax Purposes is all income earned at the site of the business location?  Y  N  
For Corporation Income Tax Purposes what type of return is filed?  Separate  Consolidated

KY Withholding \_\_\_\_\_  Check Box If Multiple Locations File Under This Tax ID

KY Sales Tax \_\_\_\_\_  Check Box If Multiple Locations File Under This Tax ID

If a Box was checked for Multiple Locations, please list the addresses of other business locations: \_\_\_\_\_  
\_\_\_\_\_

Provide a brief business description: \_\_\_\_\_  
\_\_\_\_\_

Was the business previously operated under a different owner or name?  Y  N

If YES, please list:

Date of acquisition: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Name of previous owner: \_\_\_\_\_

Former business name: \_\_\_\_\_

I understand that the information contained on this sheet will be confidential and will be shared only with the Commonwealth of Kentucky's Department of Revenue and the Cabinet for Economic Development for use with the state approved Tax Increment Financing project.

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Date



**EXHIBIT I**  
**Certification of Increment Use**

The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing Project

This Exhibit must be submitted annually by April 30 to certify the use of State Tax Increments for the preceding calendar year. Failure to submit this annual exhibit by the due date will result in a delay in processing of outstanding Request for Disbursements.

Year in which Increment was received: \_\_\_\_\_

Amount of Increment Received:     \$ \_\_\_\_\_

Increment was spent for the following:

Public Infrastructure Costs             \$ \_\_\_\_\_

Amount of Increment Unspent         \$ \_\_\_\_\_

By signing this exhibit, I agree that I have proper authority to act on behalf of the Department of Finance for the Lexington-Fayette Urban County Government (the "Agency") with regard to the Tax Incentive Agreement - TIF for The Summit Lexington Mixed-Use Redevelopment Tax Increment Financing Project and certify on behalf of the Agency that the amounts reported above have been expended within the Footprint of the Project as required by KRS 154.30-080.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT, DEPARTMENT OF  
FINANCE

\_\_\_\_\_  
[Signature of Individual]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Date]

