

**FIRST AMENDMENT**  
**TO**  
**LOCAL PARTICIPATION AGREEMENT**

This First Amendment to the Local Participation Agreement, dated November \_\_\_\_\_, 2014 (the “Effective Date”) (the “First Amendment”), among Lexington-Fayette Urban County Government (the “LFUCG”), the Department of Finance of the Lexington-Fayette Urban County Government (the “Agency” and referred to as the Department of Finance and Administration in the Local Participation Agreement as defined below) and Bayer Properties, LLC (the “Developer”), and collectively referred to as the “Parties”;

Witnesseth:

Whereas, the Parties entered into a Local Participation Agreement dated the 13<sup>th</sup> day of August, 2013 (the “LPA”), relating to the development of a mixed-use development project, referred to as The Summit Lexington Project (the “Project) a copy of which is attached as Exhibit “A”; and

Whereas, subsequent to the execution of the LPA there have been changes in the Project that necessitate amending some of the exhibits to the LPA; and

Whereas the Parties desire to execute this First Amendment to allow for the development of the Project to proceed to the benefit of the Parties.

NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. The LPA shall remain in full force and effect except to the extent it has been modified by this First Amendment. To the extent of any conflict between the provisions of the LPA and this First Amendment, the First Amendment shall control.

2. That Exhibits B, C and D of the LPA are hereby amended and restated in accordance with Exhibits B, C and D of this First Amendment attached hereto.

**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

By: \_\_\_\_\_  
Jim Gray  
Its: Mayor

DEPARTMENT OF FINANCE OF THE  
LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT

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

BAYER PROPERTIES, LLC

BY: \_\_\_\_\_  
David Silverstein  
Principal

Exhibit A

Local Participation Agreement

EXHIBIT B TO FIRST AMENDMENT TO LPA

AMENDED AND RESTATED EXHIBIT B TO LPA

**Project Description**

**Description of project location, components, and estimated cost**

The Summit Lexington is a planned mixed-use development located at the intersection of Man O' War Blvd. and Nicholasville Rd. in Lexington, Kentucky. Framed by East Tiverton Way, Walhampton Drive, Tangleway Way, and Habersham Drive, the 48.56 acre, "P"-shaped property is settled between Nicholasville Rd., Man O' War Blvd, and residential communities. Except for a small mulch business, the land is currently undeveloped; it remains the only farmland plat on Nicholasville Road within Man O' War Blvd. The surrounding area is heavily trafficked, as Nicholasville Road serves as one of the main thoroughfares into town. Popular commercial centers, such as Fayette Mall, have made it a prime destination for retail.

The development will cover the majority of the property. With over 20 separate buildings, the mixed-use development merges retail and residential alongside a green space, "new urbanism" setting. In total, the development currently plans to add over 400,000 square feet of retail, 400 units of residential space, and nearly 2,500 parking spaces.

Overall, the proposed development will have the following components:

- Large, anchor retail structures (4), 25-40,000 square feet each
- Multi-use structures (4) along the main throughway, consisting of retail shops and restaurants on the first floor and multi-family residential complexes above
- Separate multi-family residential structures (4)
- Freestanding outparcels, used for retail (10+)
- Parking spaces throughout, including parking structures attached to two main, mixed-use buildings; estimated 2,477 spaces in total

**Figure 1**

<b>The Summit Lexington Components</b>	
	<b>Square Footage</b>
Anchor Retail (over 20k)	109,500
Retail	225,340
Restaurant	59,300
Grocery	40,000
Office	11,860
<b>Retail Total</b>	<b>446,000</b>
<b>Residential</b>	<b>417,000</b>
<b>TOTAL</b>	<b>863,000</b>
<b>Parking</b>	<b>2,477 spaces</b>

The total estimated cost of the project is \$155.6 million. This includes an estimated private development cost of \$124.1 million and qualifying public infrastructure cost of \$31.5 million

Exhibit C to First Amendment to LPA

Amended and Restated Exhibit C to LPA

<b>Public Infrastructure</b>	<b>Budget</b>	<b>Comments/Inclusions</b>
Land Preparation and Demolition	\$4,295,528	Clearing, Demo, Grading, Retaining Walls and Site Prep
Sewers/Storm Drainage	\$3,596,282	Sanitary and Storm Sewer Systems
Curbs, Sidewalks, Promenades, and Pedways	\$4,603,687	Curbs, Sidewalks, Inlet Tops/Throats and Hardscape
Roads and Street Lighting	\$2,139,090	Site Lighting and Off-Site Infrastructure
Provision/Modification of Utilities	\$2,431,524	Water System & Power, Data, Phone, Cable and Meters
Environmental Remediation	\$455,509	Erosion Control, Laydown, Cleaning and Barricades
Public Spaces and Parks	\$1,482,377	Landscape and Irrigation
Surface Parking	\$1,840,230	Public parking, surface
Structured Parking	\$7,753,407	Public parking, structures
Public Infrastructure-related Soft Costs	\$2,859,763	Architecture, Engineering, Insurance, etc.
<b>TOTAL</b>	<b>\$31,457,397</b>	

## **EXHIBIT D TO FIRST AMENDMENT TO LPA**

### **AMENDED AND RESTATED EXHIBIT D TO LPA**

#### **The Plan for Financing the Project**

##### **Description of development assistance**

To provide funding support for the needed capital improvements set forth in the Development Plan and to provide support for the Project and provide development assistance, the Lexington-Fayette Urban County Government (LFUCG) plans to create the Summit Lexington Development Area pursuant to the provision of KRS 65.7041 to KRS 65.7083 and to utilize a portion of the new incremental revenues generated to support the financing of public infrastructure improvements.

The plan provides that the LFUCG will pledge 80% of the new incremental revenues, generated from the footprint of the Summit Lexington project, from real property taxes and occupational taxes over a 20-year period to pay for project costs and provide development assistance. It is understood that the local revenues from the footprint of the Project that were being generated from the area prior to the Project's development shall not be subject to any pledge of revenues to support the Project or provide development assistance.

In addition, the plan provides for the LFUCG to submit an application to the Kentucky Economic Development Finance Authority (KEDFA) to seek a pledge of 80% of new incremental state revenues from the footprint of the Project, to provide funding for approved public infrastructure costs.

##### **Financing Plan**

The Project is made up of both public and private components. The total cost of the project is estimated to be approximately \$155.6 million. This includes approximately \$124.1 million in private expenditures and \$31.5 million in qualifying public infrastructure costs.

Both the public infrastructure and private development costs of the project will be financed privately by the developer, provided, however, that tax exempt increment bonds issued by an entity other than LFUCG (such as the Kentucky Bond Development Corporation), may be used to fund all or a portion of the public infrastructure costs

with the understanding that any such increment bonds shall not be guaranteed by or be considered a pledge of the full faith and credit of any public entity. The incremental revenues pledged in this agreement will be granted to the developer or a trustee on a receipts basis, as outlined by KRS 154.30-090.

The developer has discussed the proposed development with several lenders and underwriters and has received positive feedback on the financing of the proposed project costs. Until the structure of the deal is finalized – and the balance of public and private cost sharing delineated –it is too early at this time to detail the financing costs of the project. The developer has strong relationships with many of the country’s leading lending institutions and is confident that there should be no difficulty in obtaining the financing for the project costs once the aforementioned public revenues are formally pledged.