

MASTER DEVELOPMENT AGREEMENT

THIS MASTER DEVELOPMENT AGREEMENT (this "AGREEMENT") dated the 13th day of February, 2014 (the "Effective Date") by and among the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky ("LFUCG"), and the DEPARTMENT OF FINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (the "Authority"), and BAYER PROPERTIES, LLC, a foreign limited liability company and its affiliates ("Developer" and, collectively, the "Parties");

RECITALS

Whereas, pursuant to the Act, as hereinafter defined, LFUCG by Ordinance No. 116-2013 (the "Development Area Ordinance"), adopted on September 26, 2013, established The Summit Lexington 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 August 13, 2013 (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, a copy of which is attached as Exhibit "A"; and

Whereas, in the Development Area Ordinance, LFUCG established the Authority as its agency and instrumentality and constituted authority for the purpose of performing functions related to the oversight, administration, and implementation of the Development Area Ordinance and Local Participation Agreement on behalf of LFUCG; and

Whereas, after the adoption of the Development Area Ordinance and the execution of the Local Participation Agreement, the Authority applied for a pledge of certain State Incremental

Revenues through the State's Mixed Use Program, as provided in the Act, to pay for designated Public Infrastructure Costs within the Development Area; and

Whereas, the primary private project planned within the Development Area is The Summit Lexington (the "Project"), which is a mixed-use project consisting of retail, restaurant, office, hotel and multi-family residential uses, together with related parking, and more specifically described in Exhibit "C" attached hereto; and

Whereas, LFUCG recognizes that the redevelopment of the Development Area and the construction of Project, as contemplated by the terms of this Agreement, will not occur without a public-private partnership and financial assistance provided to the Project by LFUCG and the Commonwealth of Kentucky (the "State"); and

Whereas, the Parties desire to set forth their mutual agreements, understandings and obligations, in order to facilitate the design, financing, development and construction of the Development Area and the Project.

STATEMENT OF AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, and in consideration of the premises and the mutual covenants and undertakings contained in this Agreement, the Parties hereby agree and covenant as follows:

SECTION I

Preambles

The Parties hereto agree that the above "preambles" or "preamble clauses" (the above "Recitals") are incorporated herein by reference as if fully restated herein and form a part of the agreement between 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.

- A. “Act”. Shall mean KRS 65.7041 to KRS 65.7083 and KRS 154.30, relating to tax increment financing of projects to promote economic development.
- B. “Affiliate”. A corporation or other entity controlled by, controlling or under common control of the Developer.
- C. “Agreement”. This Master Development Agreement, including all Exhibits attached hereto.
- D. “Authority”. Shall mean the Department of Finance of the Lexington-Fayette Urban County Government,
- E. “Capital Investment”. Shall have the meaning as provided in the Act.
- F. “Developer”. Has the meaning given in the introductory paragraph of this Agreement.
- G. “Development Area”. Shall have the meaning given in the Recitals to this Agreement.
- H. “Development Schedule”. Shall mean the projected phasing schedule for the Project, attached as Exhibit “B”.
- I. “Effective Date”. Has the meaning given in the introductory paragraph of this Agreement.
- J. “Incremental Revenues”. Shall mean the tax revenues pledged to the Development Area by LFUCG as set forth in the Local Participation Agreement, and by the

State, acting through KEDFA through the execution of the Tax Incentive Agreement with the Authority.

K. “LFUCG”. Shall mean the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky created pursuant to KRS 67A.

L. “KEDFA”. Shall mean the Kentucky Economic Development Finance Authority, which is assigned for administrative purposes to the Kentucky Economic Development Cabinet.

M. “Local Participation Agreement”. Shall mean the agreement pledging certain LFUCG Incremental Revenues to pay for certain Project Costs within the Development Area as set forth in Local Participation Agreement, dated August 13, 2013, or as it may be amended, a copy which is attached as Exhibit “A”.

N. “Mixed Use Program”. Shall mean the Commonwealth Participation Program for Mixed Use Redevelopment in Blighted Areas, as provided in the Act.

O. “Private Project Elements”. Shall mean the elements of the Project that shall be privately developed and owned and operated, including, retail, office, residential, restaurants and other commercial aspects of the Project.

P. “Private Financing”. Shall mean the financing needed to provide for the development and construction of the Private Project Elements or any financing received by the Developer that is not from LFUCG or State.

Q. “Project”. Shall mean The Summit Lexington Project within the Development Area, more specifically described in Section IV and Exhibit “C” attached hereto.

R. “Project Costs”. Shall mean any capital investment as defined in the Act incurred or expended to undertake the Project.

S. “Project Site”. Shall mean the property located at the northeast corner of the intersection of Man O’ War Boulevard and Nicholasville Road and as more fully described in Exhibit “A” to the Local Participation Agreement.

T. “Public Infrastructure Improvements”. Shall mean the public improvements and infrastructure constructed within the Development Area, including significant storm water and sanitary sewer facilities consistent with KRS 65.7049(3)(b)(3), public parking, roads, sidewalks, street lighting and other improvements outlined in Exhibit “D” to the Local Participation Agreement and in Exhibit “D” to this Master Development Agreement.

U. “Site Work”. Shall mean any and all construction activities excluding the construction of structures used as retail, commercial or residential space.

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

W. “Tax Incentive Agreement”. Shall mean the agreement pledging certain State Incremental Revenues to pay for designated costs within the Development Area which will be set forth in a Tax Incentive Agreement, as it may be amended, by and between the Authority and KEDFA.

X. “Tax Increment Financing” or “TIF”. Shall mean the tax increment financing that is created, regulated and administered by the Act, Local Participation Agreement and the Tax Incentive Agreement.

Y. “Unavoidable Delays”. Shall mean delays due to labor disputes, lockouts, acts of God, enemy action, terrorist 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, or unavoidable casualty, provided such matters are beyond the reasonable control of the party claiming such delay.

SECTION III

Representations

A. LFUCG and the Authority. LFUCG and Authority possess the requisite authority to enter into this Agreement, and neither LFUCG nor the Authority, in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms of this Agreement, has made any untrue statement of a material fact or failed to state a material fact.

B. Developer Representations. The Developer represents and warrants that: (i) the Developer (a) is a foreign limited liability company possessing the requisite authority to enter into this Agreement; (b) is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code; (c) has not, in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms of this Agreement, made any untrue statement of a material fact or failed to state a material fact; and (d) would not enter into this Agreement to undertake and construct the Project but for the commitment of LFUCG and the Authority to provide financial and other incentives to the Project as provided in this Agreement; (ii) the execution of this Agreement and the construction of the Project by the Developer will not knowingly violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to the Developer; and (iii) there are no undisclosed actions, suits or proceedings pending or threatened against the Developer which would, if adversely determined, have a material effect on the Developer's ability to enter into this Agreement or construct the Project in accordance with this Agreement.

SECTION IV

Project

A. The Project that the Developer shall construct on the Project Site shall substantially consist of approximately 652,230 square feet of retail, hotel, restaurant and office uses and 439,090 square feet of multifamily residential:

1. Four (4) large anchor retail structures of about 25-50,000 square feet each
2. Freestanding out parcels for possible retail, restaurant, office and grocery store uses.
3. Mixed use buildings, consisting of retail, hotel, or restaurants on the first floor with office use or residential units above.
4. Multifamily residential structures
5. Public parking for which a majority of the parking spots will be free and open to the public all of the time. A minority of parking spots will be available for the public to rent on a monthly or yearly basis.

Several Affiliates will be established to develop, construct and/or operate the various Private Project Elements, and the Developer shall have the right to assign any rights created by this Agreement to one or more of the Affiliates. The Developer and its Affiliates shall remain in good standing with the Office of the Secretary of State for the State for the full-term of this Agreement. In addition, the Developer and its Affiliates shall provide a listing of their officers and managers to the Commissioner of Finance on or before June 30 of each year following the execution of this Agreement, with the current officer and managers of the Developer and its Affiliates being listed on Exhibit "E" attached hereto.

B. The Project shall be financed with Private Financing and equity provided by the Developer, and its Affiliates, subject to the pledge of State and LFUCG Incremental Revenues to reimburse the Developer for the cost of the Public Infrastructure Improvements as set forth in Section V of this Agreement. The Developer shall keep LFUCG informed as to the status of the Private Financing for the Project.

C. The Developer agrees that no site work, including grading, excavation or construction shall commence within the Project Site until firm commitments for the Private Financing have been provided to the Commissioner of Finance, along with certifications from the primary lenders(s) for the improvements to be done in each phase of the Project that all conditions relating to its financing have been satisfied, to substantially construct the Private Project Elements of the Project. Developer acknowledges and agrees that it may be necessary for the Authority or the LFUCG to retain services to undertake an independent review of the financing proposed for the Project to determine compliance with this financing condition. Such a decision to retain such services shall be made solely by the Authority or the LFUCG, and the Developer agrees to pay the costs associated with such review. Upon satisfaction with the required Private Financing commitments the Commissioner of Finance shall give notice to the Commissioner of Planning that construction permits for the improvements may be issued and construction may begin, assuming all other requirements for issuing construction permits have been met. The Authority and the LFUCG each agree that it will not unreasonably delay in reviewing the Private Financing documentation and the subsequent authorization to issue construction permits.

D. The Project shall be constructed in accordance with a certified Final Development Plan, and as it may be amended, that will be approved by the Planning Commission. The construction plans shall include adequate provisions to the satisfaction of LFUCG, in its sole discretion, to mitigate storm water impacts to properties adjacent to the Project Site during construction of the Project. In addition, prior to starting construction and the issuance of a building permit for construction of the Project, the Developer shall post a bond in favor of LFUCG, with appropriate security or surety, in an amount sufficient to ensure that the storm

water improvements included and part of the Final Development Plan are constructed. Furthermore, the storm water improvements that are to be constructed as part of the Final Development Plan shall be constructed and installed first, although other Site Work is permitted to occur contemporaneously with the construction of the storm water improvements. All storm waster improvements must completed to the satisfaction of LFUCG prior to the issuance of building permits for any Private Project Element.

E. The Developer shall construct the Project upon the Project Site, consistent with the Final Development Plan as provided in Section IV(D) of this Agreement, and upon the acquisition of all necessary permits and approvals required by LFUCG and the State, and in accordance with this Agreement. The Developer agrees to proceed expeditiously to complete construction plans and specifications to a level adequate to obtain all permits and approvals necessary to complete construction of the Project.

F. Construction Schedule. Subject to the condition in Section IV(C) of the Agreement regarding obtaining the Private Financing commitment(s) before construction, the Developer agrees to use commercially reasonable efforts to construct the Project in accordance with the Development Schedule attached hereto as Exhibit "B". However, should the Developer encounter an Unavoidable Delay or be delayed by the Developer's inability to obtain necessary government or other permits or required approvals, or any other cause which the Developer and LFUCG agree is justifiable, the Development Schedule may be reasonably extended by LFUCG. For all other reasons, the Developer shall obtain the prior written approval of LFUCG for any substantial amendment to the Development Schedule, which approval shall not be unreasonably withheld.

G. Project Costs. The Developer shall document all Project Costs and Capital Investment, including which costs represent Public Infrastructure Costs associated with construction of the Project and submit such costs to LFUCG and the Authority in the format to be determined by the Authority and KEDFA, to enable the Authority and LFUCG to comply with its reporting requirements as set forth in the Local Participation Agreement and the Tax Incentive Agreement.

H. The Public Infrastructure Improvements are itemized in Exhibit “D” to this Agreement and are eligible to be fully reimbursed by the Authority according to the terms of the Local Participation Agreement, and it is anticipated that a portion of the costs associated with such improvements will be eligible costs for reimbursement from State Incremental Revenues under the Tax Incentive Agreement and KRS 154.30-110.

I. Public Parking. The Developer acknowledges that the ability of the Authority and LFUCG to reimburse Developer from Incremental Revenues, as provided in Section V of this Agreement for Capital Investment for the construction of public parking, is dependent upon the public parking being considered by the State to be public infrastructure within the meaning of the Act.

J. The Developer agrees to comply with the regulations applicable to the LFUCG’s Sanitary Sewer Capacity Assurance Program for approval of new connections within the Project Site to the public sanitary sewer system.

K. The Developer shall assist the Authority in complying with any reporting requirements mandated by the Local Participation Agreement and Tax Incentive Agreement, in computing the baseline LFUCG and State baseline “old revenues” applicable to the Development Area, and in calculating the Incremental Revenues that may be due to the Authority from

LFUCG and the State. The Developer shall include provisions in any Affiliate agreements, construction agreements or leases relating to the construction or operation of the Project, to require the contractors constructing the Project and businesses operating within the Project to provide information, including federal and state tax identification numbers, etc., to the Authority or other information as may be required by the Authority, relating to the LFUCG and State taxes that may be generated from the Project.

L. The Developer agrees to notify the LFUCG, in writing, when it intends to request Activation of the TIF and/or if it intends to request an extension or delay of Activation of the TIF. The Developer agrees to provide the LFUCG with a statement of Project Costs and expenditures incurred for every six (6) month period upon preliminary approval of the TIF application and prior to activation of the TIF in compliance with the reporting requirements required by the State Tax Incentive Agreement.

SECTION V

Priority of the Use of Incremental Revenues

Pursuant to the provisions of the Act and the Local Participation Agreement, LFUCG and the Authority intend to Activate the TIF on January 1, 2015, which will potentially allow for Incremental Revenues to be available to the Authority beginning in calendar year 2016. In consideration of the Developer constructing the Project and complying with the requirements and conditions of Section IV of this Agreement, LFUCG and the Authority agree that priority for the use of the Incremental Revenues received by the Authority from LFUCG and the State shall be as follows:

A. Each year following the Activation of the Development Area until its termination, an administrative charge based on 0.02% of the total project amount of \$155,500,000.00, or \$32,000.00, will be collected from the Incremental Revenues received by the Authority pursuant

to the Local Participation Agreement and/or Tax Incentive Agreement and shall be retained by the Authority to cover administrative and other expenses incurred by the LFUCG or the Authority for the administration and implementation of the Development Area Ordinance, including complying with any reporting requirements set forth in the Local Participation Agreement and/or Tax Incentive Agreement, and costs for professional services related to this Agreement and/or finalizing any required amendments to the Local Participation Agreement or Tax Incentive Agreement. It is understood that if in any year the amount of Incremental Revenues received by the Authority are not sufficient to satisfy the annual charge of \$32,000, the amount not satisfied may be recovered by the Authority from the Incremental Revenues received by the Authority in future years.

B. After the annual obligations set forth in Section V(A) of this Agreement have been fully satisfied, and the Developer meeting its obligations set forth in Section IV of this Agreement, Incremental Revenues received by the Authority pursuant to the Local Participation Agreement and/or Tax Incentive Agreement shall be annually paid to the Developer to reimburse the Developer for the Capital Investment of the Public Infrastructure Improvements, up to the actual Capital Investment for the Public Infrastructure Improvements as certified by the Developer, but not to exceed \$26,513,240 in Capital Investment. No Incremental Revenues shall be paid to the Developer pursuant to this paragraph until the Developer has expended documented Project Costs to satisfy the Minimum Capital Investment of \$20,000,000.

C. After the State gives final approval to the TIF Project, Authority agrees to execute a Tax Incentive Agreement with the State that provides for the pledging of certain State Incremental Revenues to help pay for the Public Infrastructure Improvements within the Development Area.

D. After the obligations set forth in Section V(A) and (B) of this Agreement have been fully satisfied, Incremental Revenues received by the Authority pursuant to the Local Participation Agreement and/or Tax Incentive Agreement may be used by the Authority to pay for other eligible capital costs within the TIF Development Area and set forth in the Local Participation Agreement and/or Tax Incentive Agreement.

E. It is understood by the Parties that after the activation of the TIF any State Incremental Revenues that may be generated and available to be paid by the State to the Authority pursuant to the provisions of the Tax Incentive Agreement, shall be held in escrow without interest accruing thereon, until the Minimum Capital Investment of \$20,000,000 in documented Project Costs, required for the release of State Incremental Revenues, are certified as may be provided in the Tax Incentive Agreement. It is further understood that the payment of State Incremental Revenues to the Authority are limited to reimbursement for the Public Infrastructure Costs, and other approved costs that will be identified in the Tax Incentive Agreement, that are certified by the Authority to the State and approved by the State.

F. Notwithstanding anything to the contrary, nothing in this Agreement shall be interpreted to commit LFUCG and/or the Authority to pay for or reimburse any Project Costs, except for the Incremental Revenues that may be generated within the Development Area and due to the Authority as provided in the Local Participation Agreement and the Tax Incentive Agreement.

G. The obligations of the Authority to reimburse costs to the Developer as provided in Section V of this Agreement are contingent upon KEDFA approving Tax Incentive Financing for this Project to allow any portion of the Capital Investment costs for the Public Improvements and Public Infrastructure to be reimbursed with State Incremental Revenues as Approved Public

Infrastructure Costs. In addition, any obligations of LFUCG or the Authority to reimburse Project Costs from Incremental Revenues shall terminate in the event the Tax Incentive Agreement is terminated or not renewed as provided in the Act and the Tax Incentive Agreement. However, this Agreement shall continue in full force and effect to reimburse the Developer for Public Infrastructure Improvement costs set out in Exhibit "D" herein, even if the State reimbursement has reached its maximum cap, as provided in the Tax Participation Agreement.

SECTION VI

Default

If any Party or any Parties (in either case, the "Defaulting Party") materially breaches or defaults on any of its obligations under this Agreement, the other Parties may give notice that remedial action must be taken by the Defaulting Party within sixty (60) days of the notice. The Defaulting Party shall correct such breach or default within sixty (60) days after such notice; provided, however, if (i) the default is one which cannot with due diligence be remedied by the Defaulting Party within sixty (60) 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 such default shall be extended for such period as may be necessary to remedy the same with all due diligence. If such action is not taken, the non-defaulting parties may, in addition to all other remedies available at law or in equity (including but not limited to specific performance and/or recovery of damages, including reasonable attorneys' fees and other costs and expenses), terminate this Agreement, or the portion of it affected by the default, by giving ten (10) days written notice to the defaulting Party or Parties.

In the event this Agreement is terminated, LFUCG and the Authority shall be (i) relieved of any executory obligations under this Agreement, (ii) released from undertaking any additional obligations as provided in this Agreement.

SECTION VII

Miscellaneous Provisions

A. Term; Survival; Termination. The term of this Agreement shall be from the date of this Agreement until the earliest of (i) the final payment of the Incremental Revenues and the use of such Incremental Revenues pursuant to this Agreement, the Local Participation Agreement and the Tax Incentive Agreement, or (ii) the termination of this Agreement in accordance with its terms or (iii) the termination of the Local Participation Agreement and the Tax Incentive Agreement. This Agreement shall not terminate upon the execution of any agreements required or contemplated by this Agreement, or referred to in this Agreement, and the provisions of this Agreement shall not be deemed to be merged into any such agreements, it being the intent of the Parties that this Agreement shall survive the execution and delivery of any such agreements and shall continue throughout the entire development of the Development Area.

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

C. 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.

D. Force Majeure. LFUCG, Authority or Developer 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 (provided, however, that a failure to give such notice timely shall not be a default hereunder or impair the non-performing party's immunities hereunder or account of Unavoidable Delay, unless the failure to give such notice timely actually prejudices the other party). 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.

E. 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, Return Receipt Requested, (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either

prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or

(iii) receipt of notice given by telecopy or personal delivery:

| | |
|---|---|
| If to LFUCG: | Mayor Jim Gray Government Center 200 East Main Street Lexington, Kentucky 40507 |
| With Copies to: | Kevin Atkins, Chief Development Officer Government Center 200 East Main Street Lexington, Kentucky 40507 Janet M. Graham Commissioner of Law Government Center 200 East Main Street Lexington, Kentucky 40507 |
| If to the Authority: | William O'Mara Commissioner of Finance and Administration Government Center 200 East Main Street Lexington, Kentucky 40507 |
| With a Copy to: | Janet M. Graham Commissioner of Law Government Center 200 East Main Street Lexington, Kentucky 40507 |
| If to Developer: | David Silverstein Bayer Properties, LLC 2222 Arlington Avenue Birmingham, AL 35205 |
| With Copies (which shall not Constitute notice) to: | Christine N. Westover, Esq. and James H. Frazier, III, Esq. McBrayer, McGinnis, Leslie & Kirkland, PLLC 201 E. Main Street, Suite 900 Lexington, KY 40507 |

With Copies
(which shall not
Constitute notice) to:

William Lear, Esq.
300 W. Vine Street #1200
Lexington, KY 40508

F. 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 ten (10) business days and shall not be unreasonably withheld, conditioned or delayed by the party from whom such approval or consent is required.

G. Entirety of Agreement. As used herein, the term "Agreement" shall mean this Master Development 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 or the previous agreements that are referenced herein, 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 party.

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

I. Headings. The headings in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof.

J. 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.

K. No Waiver. No waiver of any condition or covenant of this Agreement to be satisfied or performed by LFUCG, Authority or Developer 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.

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

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

N. 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 between any of the Parties of this Agreement.

O. No Third Party Beneficiary. Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of LFUCG, Authority and the Developer, any lender providing financing to Developer, 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.

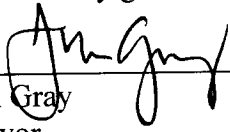
P. Diligent Performance. With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner 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.

Q. Assignment of Rights and Delegation of Duties. Neither LFUCG nor the Authority shall assign this Agreement without the prior written consent of the Developer, which shall not be unreasonably withheld. The Developer shall have the right to assign this Agreement, or any part hereof, to an Affiliate, provided the assignee shall assume all assigned liabilities and obligations of the Developer hereunder and LFUCG provides its consent in advance in writing, which consent shall not be unreasonably withheld.

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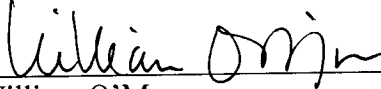
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
An urban county government of the Commonwealth of Kentucky

By: 
Jim Gray
Its: Mayor

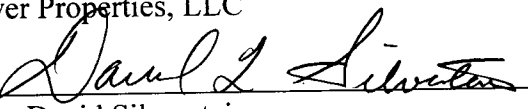
Date:

Department of Finance of the Lexington-Fayette Urban County Government.

By: 
William O'Mara
Its: Commissioner of Finance and Administration

Date:

Bayer Properties, LLC

By: 
David Silverstein
Its: Principal

Date:

Exhibit A

Local Participation Agreement

LOCAL PARTICIPATION AGREEMENT
FOR
THE SUMMIT LEXINGTON DEVELOPMENT AREA
BY AND AMONG
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
A Kentucky Urban County Government
AND
DEPARTMENT OF FINANCE AND ADMINISTRATION FOR
THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AND
BAYER PROPERTIES, LLC
August 13, 2013

Exhibit A – The Development Area, including legal description
Exhibit B – The Project, including an estimate of costs of construction, acquisition and development
Exhibit C – The Elements of the Project to be supported with Incremental Revenues
Exhibit D – The Plan for Financing the Project
Exhibit E – Listing of Old Revenues Collected from Development Area
Exhibit F – Listing of Anticipated Incremental Revenues for the LFUCG

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 DATED
 August 13, 2013
 LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
 AND
 DEPARTMENT OF FINANCE AND ADMINISTRATION FOR THE LEXINGTON-
 FAYETTE URBAN COUNTY GOVERNMENT
 AND
 BAYER PROPERTIES, LLC

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**LOCAL PARTICIPATION AGREEMENT
Summit Lexington Development Area**

THIS LOCAL PARTICIPATION AGREEMENT (this "Agreement") is made as of the 13th day of August, 2013 (the "Effective Date") by and among the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, a Kentucky urban county government (the "LFUCG"), and the DEPARTMENT OF FINANCE AND ADMINISTRATION OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (the "Agency") and BAYER PROPERTIES, LLC, a Delaware limited liability company authorized to do business in Kentucky (the "Developer");, collectively (the "Parties");

RECITALS

WHEREAS, pursuant to the Act, as hereinafter defined, the LFUCG has on the 26th day of September, 2013, adopted Ordinance Number 116-2013, (the "Development Area Ordinance"), whereby it established The Summit Lexington Development Area (the "Development Area") for the purpose of promoting a mixed-use development of previously undeveloped land; and

WHEREAS, the Council of the LFUCG recognize and determine individually that the real property that constitutes the Development Area has been and is currently characterized by underutilized land, that continuation of the underutilized status of this land within the Development Area will discourage and interfere with the Urban-County's' growth policies to encourage the sensible development of land within the existing Urban Service Area , and that the acquisition, financing, construction and development of those improvements and buildings, as identified in Exhibit B herein (collectively, the "Project"), will contribute to the public welfare of the citizens of the Urban- County, and the Commonwealth of Kentucky (the "State") and will thereby materially enhance the

area and be in furtherance of the general health and welfare of the citizens of the Urban- County and the State; and

WHEREAS, the Council of the LFUCG recognizes and determines individually that the project is a mixed-use development which includes both significant public storm water and sanitary sewer facilities designed to comply with a community-wide court decree mandating corrective action by the local government; and

WHEREAS, the Parties recognize that the development of the Development Area, will not likely occur without a public-private partnership and financial assistance provided to the Project by the LFUCG and the State; and

WHEREAS, the Parties desire to set forth the duties and responsibilities of the Parties with respect to the administration, financing and pledging of Incremental Revenues in support of the development of the Project within the Development Area; and

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

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

WHEREAS, pursuant to a resolution approved by the Developer, the Developer has authorized its managing member to execute and enter this Agreement with the LFUCG and the Agency, and the Developer desires to enter into this Agreement; and

WHEREAS, pursuant to the Act (as hereinafter defined), the LFUCG, the Agency and Developer desire to set forth their mutual agreements, understandings and obligations in this Local Participation Agreement, in order to facilitate development of the Project within the Development Area.

STATEMENT OF AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, and in consideration of the premises and the mutual covenants and undertakings contained herein, it is agreed and covenanted by and among the Parties hereto as follows:

SECTION I Recitals

The Parties hereto agree that the above "recitals" or "recital clauses" are incorporated herein by reference as if fully restated herein and form a part of the agreement among the Parties hereto.

SECTION II Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

1. "Act" or "the Act". Shall mean KRS 65.7041 to KRS 65.7083, KRS 154.30-010-154.30-090 and KRS 139.515.
2. "Agreement". Shall mean this Local Participation Agreement, including all Exhibits attached hereto.
3. "Approved Costs". Shall be that part of the Project Costs designated as approved for reimbursement by KEDFA from State Incremental Revenues as approved

public infrastructure costs and land preparation costs in the Tax Incentive Agreement and certified to the Agency as being expended by the Developer as required by Section VI of this Agreement.

4. "Developer" or "Master Developer". Shall mean Bayer Properties, LLC, its affiliates, subsidiaries or related entities.

5. "Development Area". Shall have the meaning given in the Recitals to this Agreement.

6. "Development Area Ordinance." Shall mean Ordinance No. 116-2013, adopted by the LFUCG on September 26, 2013.

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

8. "Eligible Public Infrastructure Costs". Shall mean that part of the Project Costs which would qualify as Approved Public Infrastructure Costs under KRS 154.30-010 and certified as being expended by the Developer as required in Section VI of this Agreement.

9. "Financing Plan". Shall mean the plan for financing the Project as described in Section XI of this Agreement and in Exhibit D attached hereto, as it may be amended with the approval of the of the LFUCG.

10. "Incremental Revenues". Shall mean the amount of revenues received by the LFUCG with respect to the Development Area and the State with respect to the Footprint (as defined in the Act) by subtracting Old Revenues (as defined in the Act) from New Revenues (as defined in the Act) in a calendar year; provided, however, that the calculation of Old Revenues and New Revenues from the LFUCG real property *ad*

valorem taxes shall not include any amounts designated by the LFUCG for the Lexington Public Library District.

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

12. "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.

13. "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.

14. "Mixed-Use Project or Program". Shall mean the Commonwealth Participation Program for Mixed-Use Redevelopment in Blighted Urban Area 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. "Project". Shall mean the comprehensive development described in Exhibit B, attached hereto, within the Development Area, more specifically described in Exhibit A, attached hereto.

18. "Project Costs". Shall mean any capital investment as defined in the Act incurred by the Developer to construct the Project.

19. "Project Financing". Shall mean the private financing obtained by the Developer to construct the Project.

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

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

22. "Tax Incentive Agreement". Shall mean the anticipated agreement between KEDFA and the Agency related to the pledge of State Incremental Revenues to pay for approved public infrastructure costs and land preparation costs in connection with the construction of the Project.

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, the Agency, and the Developer.

SECTION IV
Duties and Responsibilities of LFUCG

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

1. Provide for the establishment of the LFUCG Special Fund for the collection of Incremental Revenues pledged herein from LFUCG real *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 property *ad valorem* taxes and occupational taxes (consisting of business occupational taxes and payroll taxes) generated within the Development Area to support the cost of Eligible Public Infrastructure Costs, which pledge is made in Section VII herein. A list of the anticipated projects to be funded with the Incremental Revenues pledged herein is attached as Exhibit "C".
3. Make, in participation with the Agency and the Developer, application to the KEDFA requesting State participation under the "Mixed-Use Program" in accordance with applicable provisions of the Act. The application shall request State participation, as provided in the Financing Plan.
4. Designate the Agency as the entity responsible for the oversight, administration, and implementation of the Development Area Ordinance.
5. Meet as necessary with the Developer and the Agency for the purpose of reviewing the progress of the development of the Development Area and prepare an analysis of such progress for distribution to the Agency and the State in accordance with the Act.

6. Require its Department of Finance and Administration, as the "Agency" for purposes of the Act, to prepare by no later than July 1 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 Eligible Public Infrastructure Costs and/or Approved Costs in connection with the Project.

7. Upon Developer's request provide, or require the Agency to provide, written confirmation that the Developer is in good standing with its obligations under the terms of this Agreement.

SECTION V
Duties and Responsibilities of the Agency

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

1. Act as the entity responsible for the oversight, administration, and implementation of the Development Area Ordinance.

2. Participate with the LFUCG and Developer in the application to KEDFA, requesting State participation under the "Mixed-Use Program" in accordance with the applicable provisions of the Act. The application shall request State participation, as provided in the Financing Plan.

3. Meet as necessary 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 July 1 of each year during the term of this Agreement an annual report and provide same to the LFUCG, the Developer and KEDFA including, but not limited to: (a) 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 Eligible Public Infrastructure Costs and/or Approved Costs 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 and this Agreement.

SECTION VI
Duties and Obligations of the Developer

1. The Developer shall undertake and construct the Project within the Development Area, subject to any required permits or other approvals from LFUCG or other agency. The Project shall be constructed in substantial conformity (in relation to capital investment and scope) to the Project described in the Development Plan for the Development Area.

2. The Developer shall be solely responsible for obtaining Project Financing for the Project, and neither LFUCG nor the Agency shall have any responsibility or liability for the Project Financing other than reimbursing the Developer for Eligible Public

Infrastructure Costs and/or Approved Costs with Incremental Revenues as provided in this Agreement.

3. The Developer shall meet as necessary with the LFUCG and the Agency for the purpose of reviewing the progress of the development of the Development Area.

4. The developer shall annually provide to the Agency a detailed listing of any capital costs incurred on the Project, including a detailed accounting of capital investment representing Eligible Public Infrastructure Costs and Approved Costs. The Developer shall cooperate with the Agency with any required reports or information required to be provided to maintain compliance with the Tax Incentive Agreement.

5. It is understood by the Parties that a Development Agreement may need to be negotiated among the Parties to incorporate the provisions of this Agreement, the duties and obligations of the Parties, time schedule for the Project, and other matters relating to the construction of the Project not fully provided for herein.

SECTION VII Identification and Pledge of Incremental Revenues

1. The LFUCG hereby pledges eighty percent (80%) of the LFUCG's Incremental Revenues, from LFUCG real property *ad valorem* taxes and occupational taxes (consisting of business occupational taxes and payroll taxes) generated within the Development Area from the Project to reimburse the Developer for Eligible Public Infrastructure Costs expended by the Developer related to the development of the Project as provided in the approved Financing Plan as Incremental Revenues are generated, for up to a twenty (20) year period after Activation of the Development Area as provided in Section XII of this Agreement; provided, however, that the pledge of LFUCG Incremental Revenues shall be conditioned upon the approval of State

participation as a "Mixed-Use Project" 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 2012. A listing of the Old Revenues collected by the LFUCG from within the Development Area is attached hereto as Exhibit E.

2. Incremental Revenues pledged by the LFUCG in this Section shall be deposited at least annually, no later than each July 1st after the first calendar year of activation, to the Special Fund and shall be held by the Agency and used solely to reimburse the Developer for Eligible Public Infrastructure Costs expended by the Developer (and certified to the Agency as required by Section VI of this Agreement) and for no other purpose.

3. State Incremental revenues received by the Agency pursuant to the Tax Incentive Agreement shall be deposited in the Special Fund and used solely to reimburse the Developer for Approved Costs as provided in the Tax Incentive Agreement and for no other purpose.

4. The Agency shall within sixty (60) days of receipt of Incremental Revenues from LFUCG or the State annually pay such funds to the Developer to reimburse Developer for Eligible Public Infrastructure Costs and/or Approved Costs.

5. The 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 to pay for Eligible Public Infrastructure Costs and/or Approved

Costs related to the development of the Project as provided in the approved Financing Plan.

6. The pledge of Incremental Revenues as provided in this Agreement is contingent upon approval of the Project as a Mixed-Use Project and the granting of a Tax Incentive Agreement by KEDFA, In the event the Project does not achieve the minimum capital investment to allow for a release of State Incremental Revenues to the Agency as provided in the Tax Incentive Agreement, or should the Tax Incentive Agreement, after its execution, be terminated by KEDFA due to a failure of the Developer to construct the Project as proposed, or within the timeframes set forth in the Tax Incentive Agreement, this Agreement, and the obligation to reimburse the Developer for Eligible Public Infrastructure Costs and/or Approved Costs, may be terminated by LFUCG and the Agency.

7. At the Termination Date (as defined in the Development Area Ordinance), or after reimbursing the Developer for all Eligible Public Infrastructure Costs and/or Approved Costs, whichever first occurs, any funds remaining in the Special Fund shall be transferred to the General Fund of the LFUCG.

IT IS UNDERSTOOD BY THE PARTIES THAT LFUCG OR THE AGENCY SHALL HAVE NO OBLIGATION OR LIABILITY TO PAY FOR PROJECT COSTS OR PROJECT FINANCING, EXCEPT FOR THE PLEDGE OF INCREMENTAL REVENUES THAT MIGHT BE GENERATED OR RECEIVED FROM THE DEVELOPMENT AREA AS A RESULT OF THE PROJECT, AND ANY PROJECT FINANCING OBTAINED BY THE DEVELOPER SHALL NOT CONSTITUTE A DEBT OF THE LFUCG OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE

LFUCG, AND LFUCG OR THE AGENCY SHALL HAVE NO OBLIGATION TOWARD THE PAYMENT OF PROJECT FINANCING OR PROJECT COSTS BEYOND THE PLEDGE OF INCREMENTAL REVENUES AS PROVIDED IN THIS AGREEMENT.

SECTION VIII
Anticipated Benefits to the LFUCG

The LFUCG anticipates receiving substantial benefits as a result of the pledge of their Incremental Revenues to support development of the Development Area as set forth herein. Detailed summaries of Old Revenues are attached as Exhibit E and projected New Revenues for the LFUCG on an annual basis during the term of this Agreement are attached as Exhibit F hereto. The maximum amount of 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 IX
Description of Development Area

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

SECTION X
Description of Project; Costs

A detailed description of the individual projects that collectively constitute the Project is set forth in Exhibit B hereto. Also included in Exhibit B is an estimate of the costs of construction, acquisition and development of such proposed projects. The elements of the Project planned to be supported or paid for with Incremental Revenues are listed on the attached Exhibit C, subject to further amendment with approval by the LFUCG.

SECTION XI
Financing Plan

The financing for the Project shall generally be in accordance with the Financing Plan set forth in Exhibit D attached hereto. It is understood that the Financing Plan for the Project may be modified as development of the Project progresses.

SECTION XII
Commencement Date; Activation Date; Termination Date

This Agreement shall commence and be effective as of the date of execution hereof by the LFUCG. The activation date for the pledge of Incremental Revenues as set forth in Section VII hereof shall be determined by the LFUCG and Developer in accordance with the Act. This Agreement shall terminate 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 XIII
Default

If the LFUCG or the Agency (a "Defaulting Party") shall default in its obligation to make payments of Incremental Revenues set forth herein, the Agency (unless it is the Defaulting Party), the Developer and/or the indenture trustee or trustees for outstanding financing obligations secured by such Incremental Revenues shall have the power to enforce the provisions of this Agreement against the Defaulting Party. If the LFUCG or the Agency materially breaches or defaults on any of its nonpayment related obligations

under this Agreement, the Developer, and/or the indenture trustee or trustees for the outstanding financing obligations may give notice that remedial action must be taken within thirty (30) days. The Defaulting Party shall correct such breach or default within thirty (30) days after such notice, provided however that if (i) the default is one which cannot with due diligence be remedied by the Defaulting Party within thirty (30) days and (ii) the Defaulting Party proceeds as promptly as reasonably possible after such notice and with all due diligence to remedy such default, the period after such notice within which to remedy the default shall be extended for such period of time as may be necessary to remedy the same with all due diligence.

SECTION XIV
Governing Law

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

SECTION XV
Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties essential objectives as expressed herein.

SECTION XVI
Force Majeure

The LFUCG shall not be deemed to be in default in the performance of any obligation on such parties' part to be performed under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non performance of such obligation shall be directly caused by Unavoidable Delays; provided, that within fifteen (15) days after the commencement of such Unavoidable Delay, the non performing party shall notify the other party in writing of the existence and nature of any such Unavoidable Delay and the steps, if any, which the non-performing party shall have taken or planned to take to eliminate such Unavoidable Delay. Thereafter, the non-performing party shall, from time to time, on written request of the other party, keep the other party fully informed, in writing, of further developments concerning such Unavoidable Delay and the effort being made by the non-performing party to perform such obligation as to which it is in default. All provisions of any construction schedule shall be adjusted in accordance with such Unavoidable Delay.

SECTION XVII
Notices

Any notice to be given under this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earliest of (i) three (3) days following deposit in the U.S. Mail with proper postage prepaid, Certified or Registered, (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) receipt of notice given by telecopy or personal delivery:

If to the LFUCG: Mayor Jim Gray
200 East Main Street
Lexington, Kentucky 40507

With a Copy to: Janet M. Graham
200 East Main Street
Lexington, Kentucky 40507

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

If to the Developer: David Silverstein
Bayer Properties, LLC
2222 Arlington Avenue
Birmingham, AL 35205

With a Copy to: Christine N. Westover
McBrayer McGinnis Leslie & Kirkland
201 E. Main Street, Ste. 1000
Lexington, KY 40507

SECTION XVIII
Approvals

Whenever a party to this Agreement is required to consent to, or approve, an action by the other party, or to approve any such action to be taken by another party, unless the context clearly specifies a contrary intention, or a specific time limitation, such approval or consent shall be given within thirty (30) business days and shall not be unreasonably withheld or delayed by the party from whom such approval or consent is required.

SECTION XIX
Entirety of Agreement

As used herein, the term "Agreement" shall mean this Local Participation Agreement and the Exhibits attached hereto. This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements,

and understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party which has not been embodied in this Agreement, and no party shall be bound by or be liable for any alleged representation, promise, inducement, or statement of intention not so set forth. This Agreement may be amended, modified, superseded, or cancelled only by a written instrument signed by all of the parties hereto, and any of the terms, provisions, and conditions hereof may be waived only by a written instrument signed by the waiving party. Failure of any party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of any such provision by any part.

SECTION XX
Successors and Assigns

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

SECTION XXI
Headings and Index

The headings in this Agreement and the Index are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof.

SECTION XXII
Exhibits

All exhibits to this Agreement shall be deemed to be incorporated herein by reference and made a part hereof, above the signatures of the parties hereto, as if set out in full herein.

SECTION XXIII

No Waiver

No waiver of any condition or covenant of this Agreement to be satisfied or performed by the LFUCG shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of either party, except a written waiver signed by such party, shall be construed to be a waiver of any condition or covenant to be performed by the other party.

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, the Agency, and the Developer, their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this

Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

SECTION XXVII
Diligent Performance

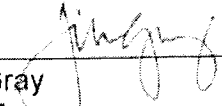
With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner and to complete the performance 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, except that the Developer may assign its rights to receive reimbursement for Eligible Public Infrastructure Costs to a financial institution that provides Project Financing. Nothing in this Section shall be construed to require prior written consent for the Developer to assign any of its rights or obligations under this Agreement to a subsidiary, affiliate or related entity.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

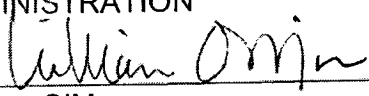
LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT
a Kentucky urban county government

By: 
Jim Gray
Its: Mayor


Approval as to Form:


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

DEPARTMENT OF FINANCE AND
ADMINISTRATION

By: 
William O'Mara
Its: Commissioner of Finance and Administration

BAYER PROPERTIES, LLC

By: 
David Silverstein
Its: Principal

EXHIBITS

Exhibit A: Development Area Map and Description

Exhibit B: The Project

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

Exhibit D: Financing Plan

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

Exhibit F: Listing of Anticipated Incremental Revenues for the LFUCG

Exhibit A: Development Area Map and Description

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 $S9^{\circ}21'54''W$ 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 $S9^{\circ}05'59''W$ 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 B: The Project

EXHIBIT B

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 greenspace, "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

| The Summit Lexington Components | |
|---------------------------------|---------------------|
| Retail & Restaurants | 401,500 Square Feet |
| Residential | 400 Units |
| Parking | 2,477 Spaces |

The total estimated cost of the project is \$92.5 million. This includes an estimated private development cost of \$66.0 million and qualifying public infrastructure cost of \$26.5 million.

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

| Public Infrastructure | Budget | Comments/Inclusions |
|---|---------------------|--|
| Land Preparation and Demolition | \$4,270,246 | Clearing, Demo, Grading, Retaining Walls and Site Prep |
| Sewers/Storm Drainage | \$2,982,843 | Sanitary and Storm Sewer Systems |
| Curbs, Sidewalks, Promenades, and Pedways | \$2,970,448 | Curbs, Sidewalks, Inlet Tops/Throats and Hardscape |
| Roads and Street Lighting | \$1,346,775 | Site Lighting and Off-Site Infrastructure |
| Provision/Modification of Utilities | \$1,824,588 | Water System & Power, Data, Phone, Cable and Meters |
| Environmental Remediation | \$738,426 | Erosion Control, Laydown, Cleaning and Barricades |
| Public Spaces and Parks | \$1,134,000 | Landscape and Irrigation |
| Parking | \$8,835,619 | Public parking, including surface and structures |
| Public Infrastructure-related Soft Costs | \$2,410,295 | Architecture, Engineering, Insurance, etc. |
| TOTAL | \$26,513,240 | |

Exhibit D: Financing Plan

EXHIBIT D

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 \$92.5 million. This includes approximately \$66.0 million in private expenditures and \$26.5 million in qualifying public infrastructure costs.

Both the public infrastructure and private development costs of the project will be financed privately by the developer. There will be no bonds issued by a public entity to finance this project. The incremental revenues pledged in this agreement will be granted to the developer on a receipts basis, as outlined by KRS 154.30-090. Though no public entity will provide up-front financing assistance in the form of bonds, the pledge of these incremental revenues is critical to the affordability of financing the project.

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.

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

Exhibit E

Listing of Old Revenues Collected from Development Area

| Property | PIDN | Fair Cash Value | Ag Land Value | Ag Total Value | Taxable Value |
|------------------------|-------------|------------------------|----------------------|-----------------------|----------------------|
| 4100 Nicholasville Rd. | 22250400 | \$5,014,500 | \$23,300 | \$169,800 | \$169,800 |

“Old Revenues” to LFUCG from real estate taxes shall be the 2012 assessed taxable value of real property within the Development Area of \$169,800, multiplied by the 2012 tax rate to LFUCG, not including any special district tax rates or the \$0.05 per hundred valuation allocated to the Library, of \$0.03 per each \$100 in taxable valuation, which is \$51.

“Old Revenues” to LFUCG from occupational taxes (net profits and payroll taxes) from the Development Area shall be based on the calendar year receipts to LFUCG for 2012 from the Development Area, which are \$100 from net profits taxes and \$2,648 from withholding taxes, for a total of \$2,748.

Exhibit F: Listing of Anticipated Incremental Revenues for the LFUCG



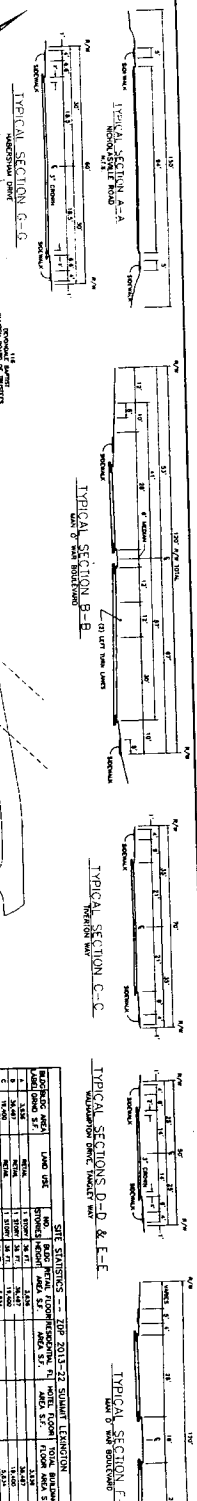
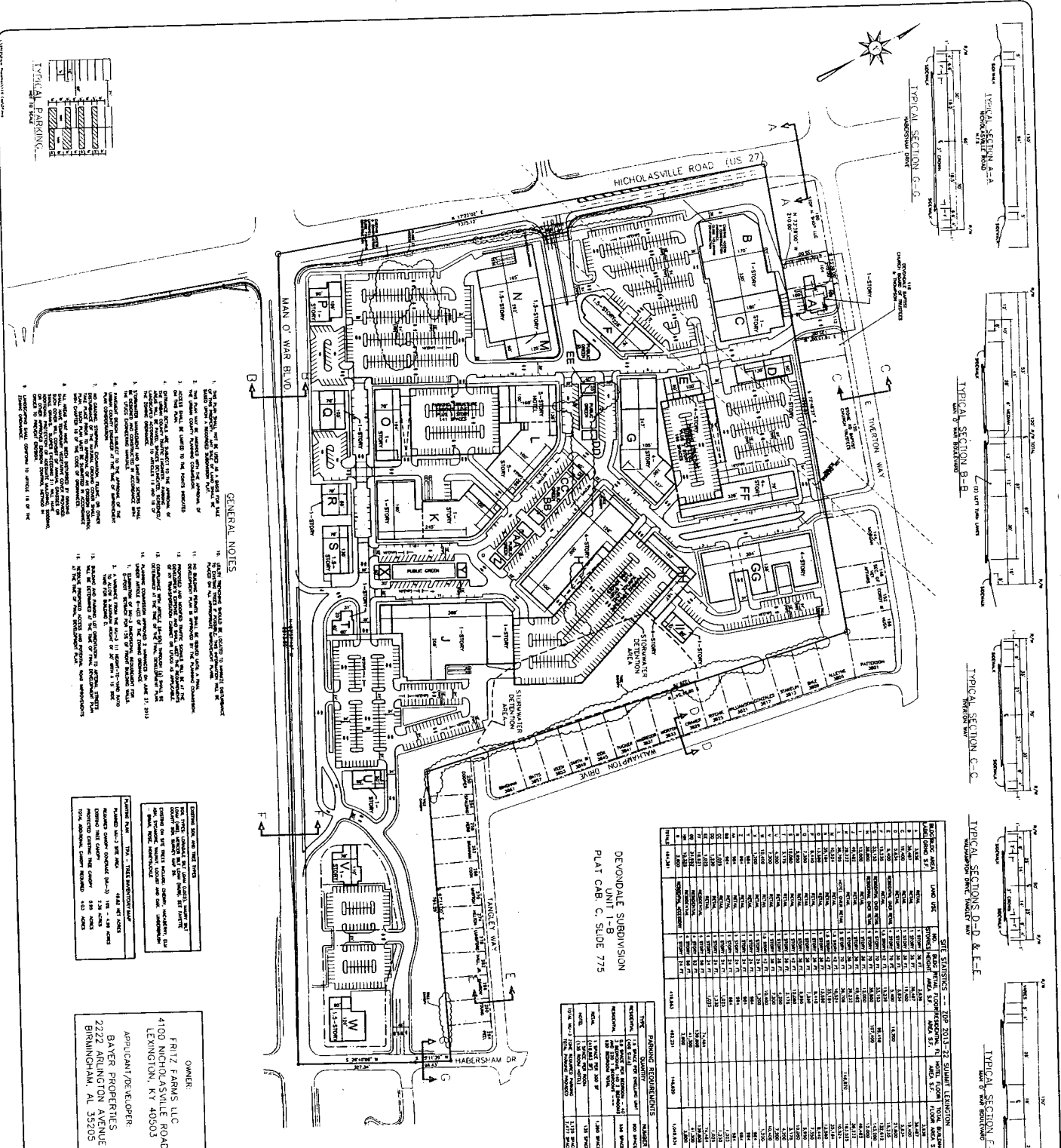
Figure 7

| The Summit: Lexington | | | | | | | | | |
|---|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|
| Incremental Tax Revenues Generated for Project | | | | | | | | | |
| | Total | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 10 | Year 20 | 20-Year Total |
| Estimated Tax Revenues from Project | | | | | | | | | |
| State Tax Revenues | \$3,032,322 | \$112,850 | \$116,236 | \$119,723 | \$123,314 | \$127,014 | \$147,244 | \$197,883 | \$3,032,322 |
| State Property Tax Revenues | | \$4,396,500 | \$4,528,395 | \$4,664,247 | \$4,804,174 | \$4,948,299 | \$5,736,435 | \$7,709,289 | \$118,135,601 |
| State Sales and Use Tax Revenues | | \$729,698 | \$751,588 | \$774,136 | \$797,360 | \$821,281 | \$952,090 | \$1,279,529 | \$19,607,245 |
| State Individual Income Tax | | \$54,956 | \$56,615 | \$58,303 | \$60,052 | \$61,854 | \$71,705 | \$96,366 | \$1,476,695 |
| State Corporate Income Tax | | \$5,294,004 | \$5,452,824 | \$5,616,409 | \$5,784,901 | \$5,958,448 | \$6,907,474 | \$9,283,068 | \$142,251,863 |
| Total State Tax Revenues | | \$193,325 | \$199,125 | \$205,098 | \$211,251 | \$217,589 | \$252,245 | \$338,997 | \$5,194,715 |
| Local Property Tax Revenues | \$5,194,715 | \$494,025 | \$508,846 | \$524,111 | \$539,834 | \$556,029 | \$644,591 | \$866,276 | \$13,274,637 |
| Local Occupational License Tax | | \$687,350 | \$707,971 | \$729,210 | \$751,086 | \$773,618 | \$896,836 | \$1,205,272 | \$18,469,352 |
| Total Local Tax Revenues | | \$5,981,354 | \$6,160,794 | \$6,345,616 | \$6,535,987 | \$6,732,066 | \$7,804,310 | \$10,488,340 | \$160,721,215 |
| Total Tax Revenues | | \$11,014,676 | \$11,360,519 | \$11,719,714 | \$12,087,238 | \$12,467,663 | \$14,056,555 | \$18,877,103 | \$265,916,930 |
| "As-Is" Tax Revenues | | | | | | | | | |
| State Tax Revenues | \$5,733 | \$213 | \$220 | \$226 | \$233 | \$240 | \$278 | \$374 | \$5,733 |
| State Property Tax Revenues | \$322,414 | \$12,000 | \$12,360 | \$12,731 | \$13,113 | \$13,506 | \$15,657 | \$21,042 | \$322,414 |
| State Sales and Use Tax Revenues | \$112,856 | \$4,200 | \$4,326 | \$4,456 | \$4,589 | \$4,727 | \$5,480 | \$7,265 | \$112,856 |
| State Individual Income Tax | \$41,033 | \$16,413 | \$16,906 | \$17,413 | \$17,935 | \$18,473 | \$21,416 | \$28,781 | \$41,033 |
| Total "As-Is" Tax Revenues | | \$666 | \$676 | \$688 | \$709 | \$723 | \$861 | \$1,132 | \$9,822 |
| Local Property Tax Revenues | \$107,481 | \$4,000 | \$4,120 | \$4,244 | \$4,371 | \$4,502 | \$5,219 | \$7,014 | \$107,481 |
| Local Occupational License Tax | \$117,303 | \$4,366 | \$4,496 | \$4,631 | \$4,770 | \$4,913 | \$5,696 | \$7,655 | \$117,303 |
| Total Local "As-Is" Tax Revenues | | \$20,779 | \$21,402 | \$22,044 | \$22,706 | \$23,387 | \$27,112 | \$36,436 | \$558,337 |
| Total "As-Is" Tax Revenues | | \$5,960,575 | \$6,139,392 | \$6,323,574 | \$6,513,281 | \$6,708,680 | \$7,777,198 | \$10,451,904 | \$160,162,878 |
| Estimated Incremental Tax Revenues | | | | | | | | | |
| (-) Retained by State | | \$1,055,518 | \$1,087,184 | \$1,119,799 | \$1,153,393 | \$1,187,995 | \$1,377,212 | \$1,850,857 | \$28,362,166 |
| (-) Retained by Local | | \$136,597 | \$140,695 | \$144,916 | \$149,263 | \$153,741 | \$178,228 | \$239,523 | \$3,670,410 |
| Net Incr. Tax Rev. Available from Project | | \$4,768,460 | \$4,911,514 | \$5,058,859 | \$5,210,625 | \$5,366,944 | \$6,221,759 | \$8,361,523 | \$128,130,303 |
| Incr. Tax Rev. Available for State TIF Program | at 80% | \$4,222,072 | \$4,348,734 | \$4,479,197 | \$4,613,572 | \$4,751,980 | \$5,508,847 | \$7,403,429 | \$113,448,664 |
| Incr. Tax Rev. Available for Local Participation | at 80% | \$546,388 | \$562,779 | \$579,663 | \$597,052 | \$614,964 | \$712,912 | \$958,094 | \$14,681,639 |

Exhibit B
Construction Schedule

Exhibit C

Preliminary Development Plan for The Summit Lexington



GENERAL NOTES

1. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
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16. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

DEVONDALE SUBDIVISION
UNIT 1-B
PLAT CAB. C, SLIDE 775

| SECTION | AREA | LAND USE | NO. OF UNITS | NO. OF PARKING SPACES | NO. OF GARAGES | NO. OF TRUCK SPACES | NO. OF BIKE SPACES | NO. OF STORAGE SPACES | NO. OF OTHER SPACES |
|---------|---------|-------------|--------------|-----------------------|----------------|---------------------|--------------------|-----------------------|---------------------|
| 1 | 1.0000 | RESIDENTIAL | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 2 | 2.0000 | RESIDENTIAL | 200 | 200 | 200 | 200 | 200 | 200 | 200 |
| 3 | 3.0000 | RESIDENTIAL | 300 | 300 | 300 | 300 | 300 | 300 | 300 |
| 4 | 4.0000 | RESIDENTIAL | 400 | 400 | 400 | 400 | 400 | 400 | 400 |
| 5 | 5.0000 | RESIDENTIAL | 500 | 500 | 500 | 500 | 500 | 500 | 500 |
| 6 | 6.0000 | RESIDENTIAL | 600 | 600 | 600 | 600 | 600 | 600 | 600 |
| 7 | 7.0000 | RESIDENTIAL | 700 | 700 | 700 | 700 | 700 | 700 | 700 |
| 8 | 8.0000 | RESIDENTIAL | 800 | 800 | 800 | 800 | 800 | 800 | 800 |
| 9 | 9.0000 | RESIDENTIAL | 900 | 900 | 900 | 900 | 900 | 900 | 900 |
| 10 | 10.0000 | RESIDENTIAL | 1000 | 1000 | 1000 | 1000 | 1000 | 1000 | 1000 |
| 11 | 11.0000 | RESIDENTIAL | 1100 | 1100 | 1100 | 1100 | 1100 | 1100 | 1100 |
| 12 | 12.0000 | RESIDENTIAL | 1200 | 1200 | 1200 | 1200 | 1200 | 1200 | 1200 |
| 13 | 13.0000 | RESIDENTIAL | 1300 | 1300 | 1300 | 1300 | 1300 | 1300 | 1300 |
| 14 | 14.0000 | RESIDENTIAL | 1400 | 1400 | 1400 | 1400 | 1400 | 1400 | 1400 |
| 15 | 15.0000 | RESIDENTIAL | 1500 | 1500 | 1500 | 1500 | 1500 | 1500 | 1500 |
| 16 | 16.0000 | RESIDENTIAL | 1600 | 1600 | 1600 | 1600 | 1600 | 1600 | 1600 |
| 17 | 17.0000 | RESIDENTIAL | 1700 | 1700 | 1700 | 1700 | 1700 | 1700 | 1700 |
| 18 | 18.0000 | RESIDENTIAL | 1800 | 1800 | 1800 | 1800 | 1800 | 1800 | 1800 |
| 19 | 19.0000 | RESIDENTIAL | 1900 | 1900 | 1900 | 1900 | 1900 | 1900 | 1900 |
| 20 | 20.0000 | RESIDENTIAL | 2000 | 2000 | 2000 | 2000 | 2000 | 2000 | 2000 |
| 21 | 21.0000 | RESIDENTIAL | 2100 | 2100 | 2100 | 2100 | 2100 | 2100 | 2100 |
| 22 | 22.0000 | RESIDENTIAL | 2200 | 2200 | 2200 | 2200 | 2200 | 2200 | 2200 |
| 23 | 23.0000 | RESIDENTIAL | 2300 | 2300 | 2300 | 2300 | 2300 | 2300 | 2300 |
| 24 | 24.0000 | RESIDENTIAL | 2400 | 2400 | 2400 | 2400 | 2400 | 2400 | 2400 |
| 25 | 25.0000 | RESIDENTIAL | 2500 | 2500 | 2500 | 2500 | 2500 | 2500 | 2500 |
| 26 | 26.0000 | RESIDENTIAL | 2600 | 2600 | 2600 | 2600 | 2600 | 2600 | 2600 |
| 27 | 27.0000 | RESIDENTIAL | 2700 | 2700 | 2700 | 2700 | 2700 | 2700 | 2700 |
| 28 | 28.0000 | RESIDENTIAL | 2800 | 2800 | 2800 | 2800 | 2800 | 2800 | 2800 |
| 29 | 29.0000 | RESIDENTIAL | 2900 | 2900 | 2900 | 2900 | 2900 | 2900 | 2900 |
| 30 | 30.0000 | RESIDENTIAL | 3000 | 3000 | 3000 | 3000 | 3000 | 3000 | 3000 |
| 31 | 31.0000 | RESIDENTIAL | 3100 | 3100 | 3100 | 3100 | 3100 | 3100 | 3100 |
| 32 | 32.0000 | RESIDENTIAL | 3200 | 3200 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 33 | 33.0000 | RESIDENTIAL | 3300 | 3300 | 3300 | 3300 | 3300 | 3300 | 3300 |
| 34 | 34.0000 | RESIDENTIAL | 3400 | 3400 | 3400 | 3400 | 3400 | 3400 | 3400 |
| 35 | 35.0000 | RESIDENTIAL | 3500 | 3500 | 3500 | 3500 | 3500 | 3500 | 3500 |
| 36 | 36.0000 | RESIDENTIAL | 3600 | 3600 | 3600 | 3600 | 3600 | 3600 | 3600 |
| 37 | 37.0000 | RESIDENTIAL | 3700 | 3700 | 3700 | 3700 | 3700 | 3700 | 3700 |
| 38 | 38.0000 | RESIDENTIAL | 3800 | 3800 | 3800 | 3800 | 3800 | 3800 | 3800 |
| 39 | 39.0000 | RESIDENTIAL | 3900 | 3900 | 3900 | 3900 | 3900 | 3900 | 3900 |
| 40 | 40.0000 | RESIDENTIAL | 4000 | 4000 | 4000 | 4000 | 4000 | 4000 | 4000 |
| 41 | 41.0000 | RESIDENTIAL | 4100 | 4100 | 4100 | 4100 | 4100 | 4100 | 4100 |
| 42 | 42.0000 | RESIDENTIAL | 4200 | 4200 | 4200 | 4200 | 4200 | 4200 | 4200 |
| 43 | 43.0000 | RESIDENTIAL | 4300 | 4300 | 4300 | 4300 | 4300 | 4300 | 4300 |
| 44 | 44.0000 | RESIDENTIAL | 4400 | 4400 | 4400 | 4400 | 4400 | 4400 | 4400 |
| 45 | 45.0000 | RESIDENTIAL | 4500 | 4500 | 4500 | 4500 | 4500 | 4500 | 4500 |
| 46 | 46.0000 | RESIDENTIAL | 4600 | 4600 | 4600 | 4600 | 4600 | 4600 | 4600 |
| 47 | 47.0000 | RESIDENTIAL | 4700 | 4700 | 4700 | 4700 | 4700 | 4700 | 4700 |
| 48 | 48.0000 | RESIDENTIAL | 4800 | 4800 | 4800 | 4800 | 4800 | 4800 | 4800 |
| 49 | 49.0000 | RESIDENTIAL | 4900 | 4900 | 4900 | 4900 | 4900 | 4900 | 4900 |
| 50 | 50.0000 | RESIDENTIAL | 5000 | 5000 | 5000 | 5000 | 5000 | 5000 | 5000 |

OWNER:
FRITZ FARMS LLC
4100 NICHOLASVILLE ROAD
LEXINGTON, KY 40503

APPLICANT/DEVELOPER:
BAYER PROPERTIES
2222 ARLINGTON AVENUE
BIRMINGHAM, AL 35205

PREPARED BY:
HDR ENGINEERING
2475 SIR BARTON WAY
LEXINGTON, KY 40509

SHOOK KELLEY ARCHITECTURE
2151 HAWKINS ST., SUITE 400
CHARLOTTE, NC 28203

Scale: 1" = 100'
JUNE 2013

**SUMMIT LEXINGTON
BAYER PROPERTIES
FRITZ FARMS LLC
PRELIMINARY
DEVELOPMENT PLAN**

CERTIFICATION

I, the undersigned, being a duly Licensed Professional Engineer in the State of Kentucky, do hereby certify that the above is a true and correct copy of the Preliminary Development Plan for the Summit Lexington, as shown on the attached sheets, and that the same conform to the requirements of the Kentucky State Board of Professional Engineers, Inc. as set forth in the Kentucky State Board of Professional Engineers, Inc. Rules and Regulations, Chapter 100, and the Kentucky State Board of Professional Engineers, Inc. Code of Ethics, Article 10, Section 10.1.

DATE: 6/13/13
SIGNATURE: [Signature]

PDP

ZPP 2013-22

DATE: 6/13/13
DRAWN: [Name]
CHECKED: [Name]
OWNER: BAYERNATIONAL
BY: [Name]
TITLE: [Title]
REVISIONS: [Table]

**SUMMIT LEXINGTON
BAYER PROPERTIES - FRITZ FARMS LLC
PRELIMINARY DEVELOPMENT PLAN**

HDR HDR Engineering, Inc.
Lexington, Kentucky
Columbus, Ohio

shook kelley
Lexington, Kentucky
Charlotte, NC

Exhibit D

Public Infrastructure Improvements

| Public Infrastructure | Budget | Comments/Inclusions |
|---|---------------------|--|
| Land Preparation and Demolition | \$4,270,246 | Clearing, Demo, Grading, Retaining Walls and Site Prep |
| Sewers/Storm Drainage | \$2,982,843 | Sanitary and Storm Sewer Systems |
| Curbs, Sidewalks, Promenades, and Pedways | \$2,970,448 | Curbs, Sidewalks, Inlet Tops/Throats and Hardscape |
| Roads and Street Lighting | \$1,346,775 | Site Lighting and Off-Site Infrastructure |
| Provision/Modification of Utilities | \$1,824,588 | Water System & Power, Data, Phone, Cable and Meters |
| Environmental Remediation | \$738,426 | Erosion Control, Laydown, Cleaning and Barricades |
| Public Spaces and Parks | \$1,134,000 | Landscape and Irrigation |
| Parking | \$8,835,619 | Public parking, including surface and structures |
| Public Infrastructure-related Soft Costs | \$2,410,295 | Architecture, Engineering, Insurance, etc. |
| TOTAL | \$26,513,240 | |

Exhibit E

Officers and Members of Developer and its Affiliates

Jeffrey Bayer, *President & CEO*

Jeffrey founded Bayer Properties, LLC in 1983. Under his leadership, the organization has grown from a local property management company to a national commercial real estate firm. As the President and CEO, Jeffrey oversees the strategic and operational direction for the company. Prior to Bayer, he served as Partner in Metropolitan Properties, Inc. for 10 years.

Jon W. Rotenstreich, *Principal*

Jon Rotenstreich is a financial consultant and private investor for Bayer Properties through his own firm, Rotenstreich Family Partners, LLC. During his career, Jon has served as Chairman and CEO of TIG Holdings Inc., President and Director of Torchmark Corporation, and President, CEO and Director of Waddell & Reed Financial. He has also served as Vice President and Treasurer of IBM, and was with Salomon Brothers, where he became a General Partner and a Managing Director upon the firm's incorporation.

David Silverstein, *Principal*

David directs Asset Management for the company and manages Bayer's relationship with governmental entities around the country. Before joining Bayer Properties in 1994, he was a Partner in the law firm of Berkowitz, Lefkowitz, Isom and Kushner, serving as outside counsel to Bayer for seven years. His legal practice concentrated in the acquisition, financing, leasing, management and development of commercial real estate projects.

Jami Wadkins, *Executive Vice President/Chief Financial Officer*

Since joining Bayer in 2005 as the Corporate Controller, Jami Wadkins has overseen all finance and accounting operations for the company. Prior to Bayer, she was the Director of Finance at Books-A-Million, the second largest book retailer in the country. During her seven years at BAM, Jami was responsible for banking, treasury, risk management, payroll and benefits, and accounting.

Libby Lassiter, *Executive Vice President – Leasing*

Libby Lassiter joined Bayer Properties in 2005, bringing with her more than 20 years of retail leasing and management experience. She currently oversees leasing and development for The Summit and the company's other outdoor fashion and mixed-use projects. Before joining the Bayer team, she was associated with General Growth Properties, Inc. in Chicago as Senior Vice President for Retail Redevelopment.

Jay Wiseman, *Vice President – Acquisitions*

Jay is a 28 year industry veteran. Prior to joining Bayer, he worked for CBL & Associates and was involved with the acquisition of 59.5 million square feet of malls, strip centers and office buildings totaling \$6.5 billion. He also sourced international investments and established investment platforms in Brazil and China. Prior to his acquisition career, his background included working in institutional asset management, lending and brokerage, at Metropolitan Life Insurance Company, Heller Real Estate Financial Services, Alex.Brown Kleinwort Benson and Colliers Arnold.