

**FIRST AMENDMENT TO
LOCAL PARTICIPATION AGREEMENT
FOR
THE DOWNTOWN MOREHEAD DEVELOPMENT AREA
BY AND AMONG
CITY OF MOREHEAD, KENTUCKY
AND
COUNTY OF ROWAN, KENTUCKY
AND
THE DOWNTOWN MOREHEAD REDEVELOPMENT
TIF DISTRICT SPECIAL FUND BOARD
SEPTEMBER 1, 2019**

**FIRST AMENDMENT TO LOCAL PARTICIPATION AGREEMENT
Downtown Morehead Development Area**

THIS FIRST AMENDMENT TO LOCAL PARTICIPATION AGREEMENT (this “First Amendment”) dated this 1st day of September, 2019 by and among the City of Morehead, Kentucky (the “City”), the County of Rowan, Kentucky (the “County”), and The Downtown Morehead Redevelopment TIF District Special Fund Board (the “Agency” and collectively, the “Parties”) WITNESSETH:

WHEREAS, the City and County, by separate Ordinances (the “Development Area Ordinance”) established the Downtown Morehead Development Area (the “Development “Area”) pursuant to the provisions of KRS 65.7041 to KRS 65.7085 (the “Act”) and designated the Agency as the entity responsible for the oversight, administration, and implementation of the Development Area Ordinance as the Development Area in accordance with the Act; and

WHEREAS, the Parties executed a Local Participation Agreement (the “Agreement”) related to the Development Area dated _____, 2017; and

WHEREAS, subsequent to the execution of the Agreement the Parties entered into a Development Agreement with Lockett & Farley Development, LLC, dated January 19, 2018 to undertake a portion of the planned redevelopment of the Development Area; and

WHEREAS, there is a need to amend the Agreement through the execution of this First Amendment.

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

That the Agreement is hereby amended as follows:

1. That the Effective Date of the Agreement is hereby determined to be ~~May 1~~January 1, ~~2017~~2018.

2. That Section II, Definitions of the Agreement is amended in full to read as follows:

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 and KRS 154.30-010-154.30-090.

2. “Activation”. Shall mean the first date of the calendar year to be used for the calculation of Incremental Revenues which shall be determined by the Parties in consultation with the Developer.

3. “Administrative Costs”. Shall be an amount equal to not more than three percent (3)% of the Incremental Revenues, as determined by the Agency, which shall be retained by the Agency to pay for administrative costs related to its duties related to the Development Area as set forth in the Agreement, before any Public Infrastructure Costs are paid.

4. “Agency”. Shall mean the Downtown Morehead Redevelopment TIF District Special Fund Board, Kentucky, which shall be responsible for administering the Special Fund and the Development Area Ordinance pursuant to the TIF Documents and the Act.

5. “Agreement”. Shall mean this Local Participation Agreement, including all Exhibits attached hereto, and any amendments thereto.

6. “Approved Public Infrastructure Costs”. Shall be those costs approved for reimbursement with State Incremental Revenues in the event a project within the Development Area may be approved for a pledge of State Incremental Revenues under the Act.

7. “City”. Shall mean the City of Morehead, Kentucky.

8. “City Authorizations”. Shall mean those necessary governmental authorizations, resolutions, orders, hearings, notices, ordinances, and other acts, required by laws, rules, or regulations to provide the City and its officers with the proper authority to perform all obligations of the City resulting from this Agreement, and perform all other obligations of the City made necessary by, or resulting from the establishment of the Development Area.

9. “County”. Shall mean Rowan County, Kentucky acting by and through the Rowan County Fiscal Court.

10. “County Authorizations”. Shall mean those necessary governmental authorizations, resolutions, orders, hearings, notices, ordinances, and other acts, required by laws, rules, or regulations to provide the County and its officers with the proper authority to perform all obligations of the County resulting from this Agreement, and perform all other obligations of the County made necessary by, or resulting from the establishment of the Development Area.

11. “Developer”. Shall mean Lockett & Farley Development, LLC, a Kentucky limited liability company, and/or several different development groups, separately and collectively, their successors, affiliates, subsidiaries or related entities, who have proposed to develop the Development Area.

12. “Development Area”. Shall mean the “Downtown Morehead Development Area” as defined in the Development Area Ordinance.

13. “Development Area Ordinance.” Shall mean Ordinance No. 07-2017, adopted by the City on April 10, 2017 and/or Ordinance No. 07-17, adopted by the County on April 18, 2017.

14. “Development Agreement”. Shall mean the agreement among the Parties and Lockett & Farley Development, LLC, as Developer, dated January 19, 2018 relating to the redevelopment of the Development Area.

15. “Effective Date”. ~~Shall have the meaning given in the introductory paragraph of this Agreement.~~ be deemed to be January 1, 2018, which shall also be the Commencement Date as defined by the Act.

16. “Financing Plan”. Shall mean the plan for financing the Project as described in SECTION X of this Agreement and in Exhibit D attached hereto, as it may be amended with the approval of the of the Parties.

17. “Incremental Revenues”. Shall mean the amount of revenues received by the City and County with respect to the Development Area, and the State with respect to the “Footprint” (if a Tax Incentive Agreement may be approved by KEDFA) by subtracting Old Revenues from New Revenues in a calendar year after Activation.

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

19. “New Revenues”. From the City and County shall mean City and County tax revenues generated from the Development Area, for each calendar year after Activation, from real property *ad valorem* taxes and occupational taxes (business license and employee payroll taxes; and from the State as defined in a Tax Incentive Agreement.

20. “Old Revenues”. From the City and County shall mean City and County tax revenues generated from the Development Area, for calendar year ~~2016~~2017,

from real property *ad valorem* taxes and occupational taxes (business license and employee payroll taxes; and from the State as defined in a Tax Incentive Agreement.

21. “Private Financing”. Shall mean the financing needed to provide for the development and construction of the Project elements or any financing received by the Developer that is not from City, County, or the State.

22. “Project”. Shall mean the improvements within the Development Area.

23. “Project Costs”. Shall mean any Capital Investment, as defined in the Act, within the Development Area.

24. “Public Infrastructure Costs”. Shall mean the costs that may be paid for or reimbursed from City and County Incremental Revenues as Redevelopment Assistance as provided in Exhibit C of this Agreement, and which shall also include the cost of an overhead pedestrian connection to connect the hotel, planned as part of the Project, with the Morehead Conference Center.

25. “Redevelopment Assistance” shall have the meaning as provided in the Act, but which shall be limited to Public Infrastructure Costs.

26. “Special Fund”. Shall mean the Downtown Morehead Development Area Special Fund established in the Development Area Ordinance and maintained by the Agency, for the purpose of receiving, distributing and maintaining Incremental Revenues pledged by the City, County and/or State, in the manner set forth in the TIF Documents in connection with the Development Area.

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

28. “Tax Incentive Agreement”. Shall mean any agreement between KEDFA and the Agency related to the pledge of State Incremental Revenues to pay for Approved Public Infrastructure Costs.

29. “Termination Date”. Shall have the meaning as provided in the Development Area Ordinances.

30. “TIF Documents”. Shall mean the Development Area Ordinance, the Local Participation Agreement, the Tax Incentive Agreement, the Development Plan, any Interlocal Cooperation Agreement, the Development Agreement, and related documents.

31. “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.”

3. That Section IV, Duties and Responsibilities of City and County of the Agreement is amended in full to read as follows:

SECTION IV
Duties and Responsibilities of City and County

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

1. Provide for the issuance of Incremental Revenues to the Agency for deposit into the Special Fund that is to be created by the Agency for the collection of Incremental Revenues pledged herein from City and/or County Incremental Revenues and State Incremental Revenues pledged in accordance with the terms of the Tax Incentive Agreement, within the Development Area from the Project.

2. Pledge eighty percent (80%) of the City’s and County’s Incremental Revenues generated within the Development Area to pay for Redevelopment Assistance in connection with the Project pursuant to the terms set forth in the TIF Documents, for up to a twenty (20) year period, which pledge is made in SECTION VI herein.

3. Make, in participation with the Agency and the Developer(s), application(s) to KEDFA requesting State TIF participation in accordance with applicable provisions of the Act, if requested by the Developer for a project that may be eligible for a pledge of State Incremental Revenues under 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 and the Special Fund pursuant to the TIF Documents and the Act.

5. Meet as may be required with the Developer and the Agency for the purpose of reviewing the progress of the development of the Development Area and review the analysis of such progress prepared by the Agency (in conjunction with the Developer) for distribution to the City, County and the State in accordance with the Act.

6. Provide the Agency with information necessary for the Agency to prepare by March 15, or such other date to meet the reporting schedule of KEDFA or the State to receive State Incremental Revenues under the Tax Incentive Agreement, of each year during the term of this Agreement an annual report including, but not limited to: (a) the total real property taxes, business occupational license taxes and business employee payroll taxes collected within the

Development Area during the previous calendar year; (b) a determination of New Revenues collected within the Development Area during the previous calendar year; and (c) the amount, if any, of Incremental Revenues spent from the Special Fund on Administrative Costs, Approved Public Infrastructure Costs and/or Redevelopment Assistance in connection with the Project.

4. That Section V, Duties and Responsibilities of the Agency of the Agreement is amended in full to read as follows:

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 party responsible for the oversight, administration, and implementation of the Development Area Ordinance and the Special Fund.

2. Participate with the City, County and Developer in the application to KEDFA, requesting State TIF participation in accordance with the applicable provisions of the Act (if applicable). The application shall request State participation, as provided in the Financing Plan.

3. Meet as may be required with the Developer, the City and County 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 City, County and the State in accordance with the Act.

4. Prepare by no later than March 15, or such other date to meet the reporting schedule of KEDFA or the State to receive Incremental Revenues from the State under the Tax Incentive Agreement, of each year during the term of this Agreement, an annual report and provide same to the City and County, the Developer and KEDFA (if a Tax Incentive Agreement is in effect) including, but not limited to: (a) the total real property taxes, business occupational license taxes and business employee payroll taxes collected within the Development Area during the previous calendar year; (b) a determination of New Revenues collected within the Development Area during the previous calendar year; and (c) the amount, if any, of Incremental Revenues spent from the Special Fund on Administrative Costs, Approved Public Infrastructure Costs and/or Redevelopment Assistance in connection with the Project.

5. Each year, once the Agency has received deposits of Incremental Revenues into the Special Fund from the City, County, and/or State, pay such funds to the City, County, and/or Developer (as applicable) within thirty (30) days to cover the payment of Administrative Costs, Approved Public Infrastructure Costs

and/or Redevelopment Assistance pursuant to the terms set forth in the TIF Documents.

6. 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.

7. Upon receipt of 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.

5. That Section VI, Identification and Pledge of Incremental Revenues of the Agreement is amended in full to read as follows:

SECTION VI
Identification and Pledge of Incremental Revenues

1. To the extent Incremental Revenues are generated, for up to a twenty (20) year period after the Activation of the Development Area, as provided in the TIF Documents and the Act, the City and the County hereby pledge eighty percent (80%) of the City's and County's Incremental Revenues generated within the Development Area from the Project to pay for Redevelopment Assistance and Administrative Costs within the Development Area pursuant to the terms set forth in the TIF Documents. 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, as provided for in the TIF Documents and the Act.

2. Incremental Revenues pledged by the City and County in this Section shall be issued at least annually, no later than each June 1st after the first calendar year of Activation, to the Agency for deposit to the Special Fund. The Incremental Revenues from the City and County are hereby irrevocably pledged and shall be maintained by the Agency and used solely for payment and/or reimbursement of Redevelopment Assistance and Administrative Costs in support of the Project and for no other purpose. It is anticipated that the Incremental Revenues shall be used to reimburse Public Infrastructure Costs expended by the Developer, but if requested by the Developer, Incremental Revenues may be paid directly to Developer's lender to pay for debt service on loans or other debt incurred by Developer to pay for Public Infrastructure Costs. Such Special Fund shall be continued and maintained until the Termination Date of the Development Area.

3. Incremental Revenues received by the Agency from the State pursuant to the Tax Incentive Agreement shall be deposited in the Special Fund as soon as they are received each year after the first calendar year of activation. The Incremental Revenues from the State are hereby irrevocably pledged and shall be maintained by the Agency and used solely for payment of, or as reimbursement for,

Approved Public Infrastructure Costs in support of the Project pursuant to the terms set forth in the TIF Documents and for no other purpose. The Special Fund shall be continued and maintained until the Termination Date of the Development Area.

4. At the Termination Date (as defined in the Development Area Ordinance) all amounts remaining in the Special Fund shall be transferred to the General Fund of the City and County based upon how much of the increment each had deposited.

6. That Section XVI, Notices of the Agreement is amended in full to read as follows:

SECTION XVI
Notices

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

If to the City: Mayor
314 Bridge Street
Morehead, Kentucky 40351

With a Copy to: Morehead City Clerk
314 Bridge Street
Morehead, Kentucky 40351

If to the Agency: Downtown Morehead Redevelopment TIF
District Special Fund Board
P.O. Box 946
Morehead, Kentucky 40351

If to the County: County Judge/Executive
600 West Main Street
Morehead, Kentucky 40351

With a Copy to: Rowan County Clerk
600 West Main Street
Morehead, Kentucky 40351

7. Except as modified by this First Amendment, the Agreement shall remain in full force and effect.

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.

CITY OF MOREHEAD

Approval as to Form:

By: _____
Laura White-Brown
Its: Mayor

Joyce Stevens
City Attorney

COUNTY OF ROWAN, KENTUCKY

Approval as to Form:

By: _____
Harry T. Clark
Its: Judge Executive

Cecil Watkins
County Attorney

Downtown Morehead Redevelopment TIF District Special Fund Board

By: _____
Manager

Its: Manager for the Downtown Morehead Redevelopment TIF District Special Fund Board