

**EXHIBIT D**  
**LOCAL PARTICIPATION AGREEMENT**

**DRAFT**  
**12/16/14**

**LOCAL PARTICIPATION AGREEMENT**  
**FOR**  
**THE MIDWAY STATION DEVELOPMENT AREA**  
**BY AND AMONG**  
**THE CITY OF MIDWAY, KENTUCKY**  
**AND**  
**THE OFFICE OF THE MAYOR OF MIDWAY**  
**AND**  
**ANDERSON COMMUNITIES, INC.**

**December \_\_\_\_, 2014**

**Exhibit A – The Development Area, including legal description**

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

**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 Anticipated Incremental Revenues for the City of Midway**

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TO  
LOCAL PARTICIPATION AGREEMENT  
DATED  
December \_\_, 2014  
THE CITY OF MIDWAY, KENTUCKY,  
AND  
THE OFFICE OF THE MAYOR OF MIDWAY,  
AND  
ANDERSON COMMUNITIES, INC.

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**LOCAL PARTICIPATION AGREEMENT**  
**Midway Station Development Area**

**THIS LOCAL PARTICIPATION AGREEMENT** (this “Agreement”) is made as of the \_\_\_\_ day of December, 2014 (the “Effective Date”) by and among (i) **CITY OF MIDWAY, KENTUCKY**, a Kentucky city of the fourth class pursuant to KRS Chapter 81 (the “City”), (ii) **OFFICE OF THE MAYOR**, The City of Midway, Kentucky (the “Agency”), (iii) **ANDERSON COMMUNITIES, INC.**, a Kentucky corporation (“Developer,” collectively, with the City and the Agency, the “Parties,” and each a “Party”).

**RECITALS**

WHEREAS, pursuant to the Act, as hereinafter defined, the City has on the \_\_\_\_ day of \_\_\_\_\_, 2014, adopted Ordinance Number \_\_\_\_\_ (the “Development Area Ordinance”), whereby it established The Midway Station Development Area (the “Development Area”) for the purpose of promoting a mixed-use development of previously developed land, which Development Area is more particularly described on **Exhibit A** attached hereto and incorporated herein;

WHEREAS, the Council of the City recognizes and determines individually that the real property that constitutes the Development Area has been and is currently characterized by vacant parcels, deteriorated structures and underutilized land, that continuation of the physical deterioration and inadequate infrastructure within the Development Area will discourage and interfere with the City’s growth policies to encourage the sensible development of land within the City, and that the acquisition, financing, construction and development of those improvements and buildings, as identified in **Exhibit B** attached hereto and incorporated herein, will contribute to the public welfare of the citizens of the City, 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 City and the State;

WHEREAS, the Council of the City recognizes and determines individually that the Project is a mixed-use development which includes significant public infrastructure improvements;

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

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;

WHEREAS, pursuant to the Development Area Ordinance, the Council of the City has authorized the Mayor to execute and enter into this Agreement on behalf of the City, and the City desires to enter into this Agreement;

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

WHEREAS, pursuant to the Act (as hereinafter defined), the City and the Agency 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, and KRS 154.30-010-154.30-090.
2. "Administrative Costs". Shall mean those administrative costs described in Section V(A) of the Master Development Agreement.
3. "Agency". Shall mean the Office of the Mayor for the City of Midway, Kentucky, which shall be responsible for administering the Special Fund and the Development Area Ordinance pursuant to the TIF Documents and the Act.

4. "Agreement". Shall mean this Local Participation Agreement, including all Exhibits attached hereto and incorporated herein.
5. "Approved Public Infrastructure Costs". Shall have the meaning as provided in the Act.
6. "City". Shall mean the City of Midway, Kentucky.
7. "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 officials 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.
8. "County". Shall mean Woodford County, Kentucky acting by and through the Woodford County Fiscal Court.
9. "Developer". Shall mean Anderson Communities, Inc., a Kentucky corporation, and its successors, affiliates, subsidiaries or related entities.
10. "Development Area". Shall mean "The Midway Station Development Area" as defined in the Development Area Ordinance.
11. "Development Area Ordinance". Shall mean Ordinance No. \_\_\_\_\_, adopted by the Midway City Council on \_\_\_\_\_, 2014.
12. "Effective Date". Shall have the meaning given in the introductory paragraph of this Agreement.
13. "Financing Plan". Shall mean the plan for financing the Project as described in Section \_\_\_\_ of this Agreement and in **Exhibit D** attached hereto, as it may be amended with the approval of the City.

14. “Incremental Revenues”. Shall mean the amount of revenues received by the City (and, if participating, revenues received by the Woodford County Fiscal Court) 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.

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

16. “Master Development Agreement”. Shall mean that certain Master Development Agreement dated \_\_\_\_\_, 2014, by and among the City, the Agency and the Developer relating to the Project.

17. “Mayor”. Shall mean the Office of the Mayor for the City of Midway, Kentucky, which shall serve as the Agency.

18. “Mixed-Use Project or Program”. Shall mean the Commonwealth Participation Program for Mixed-Use Redevelopment in Blighted Urban Areas, as described in the Act.

19. “New Revenues”. Shall have the meaning as provided in the Act.

20. “Old Revenues”. Shall have the meaning as provided in the Act.

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



25. "Special Fund". Shall mean The Midway Station 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.

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

27. "Tax Incentive Agreement". Shall mean the anticipated agreement between KEDFA and the Agency related to the pledge of State Incremental Revenues to reimburse Public Infrastructure Costs.

28. "Termination Date". Shall have the meaning as provided in the Development Area Ordinance.

29. "TIF Documents". Shall mean the Development Area Ordinance, the Local Participation Agreement, the Tax Incentive Agreement, the Master Development Agreement, the Development Plan, any Interlocal Cooperation Agreement, and related documents.

30. "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 City and the Agency.

**SECTION IV**  
**Duties and Responsibilities of City**

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

1. Provide for the establishment of the Special Fund for the collection of Incremental Revenues pledged herein from City and/or County real property ad valorem taxes and occupational taxes (consisting of business occupational taxes and payroll taxes) 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 Incremental Revenues from City real property ad valorem taxes and occupational taxes (consisting of business occupational taxes and payroll taxes) generated within the Development Area to pay for Administrative Costs and/or 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, application to 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 party 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 at least quarterly 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 Developer for distribution to the Agency and the State in accordance with the Act.

6. Provide the Developer with information necessary for the Developer 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.

7. Upon receipt of the Developer's Request, provide or require the Agency to provide written confirmation whether 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 party responsible for the oversight, administration, and implementation of the Development Area Ordinance and the Special Fund.

2. Participate with the City 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 at least quarterly with the Developer and the City for the purpose of reviewing the progress of the development of the Development Area, and review an analysis of such progress prepared by the Developer for distribution to the Agency and the State in accordance with the Act.

4. Provide the Developer with information necessary for the Developer to 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 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 during the previous calendar year.

5. Each year, once the Agency has received deposits of Incremental Revenues into the Special Fund from the City, County (if participating) and 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 (as defined in the Act) with KEDFA and this Agreement.

**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 Date (as defined in the Act) of the Development Area, as provided in the TIF Documents and the Act, the City hereby pledges eighty percent (80%) of the City's Incremental Revenues from City 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 pay for Administrative Costs and Redevelopment Assistance 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 in this Section shall be deposited at least annually, no later than June 1st of each year after the first calendar year of activation, into the Special Fund. The Incremental Revenues from the City are hereby irrevocably pledged and shall be maintained by the Agency and used solely for payment and/or reimbursement of Administrative Costs and Redevelopment Assistance in support of the Project pursuant to the terms set forth in the TIF Documents and for no other purpose. Such Special Fund shall be continued and maintained until the Termination Date of the Development Area.

3. In the event the County executes an Interlocal Cooperation Agreement with the City to pledge Incremental Revenues for the Midway Station Development Area, Incremental Revenues received by the Agency from the County shall be deposited into the Special Fund as soon as they are received each year after the first calendar year of activation. The Incremental Revenues from the County shall be maintained by the Agency and used solely for payment of or

as reimbursement for Administrative Costs and Redevelopment Assistance 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. 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 Administrative Costs and 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.

5. At the Termination Date, all amounts remaining in the Special Fund shall be transferred to the General Fund of the City.

#### **SECTION VII** **Anticipated Benefits to the City**

The City 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 projected New Revenues for the City 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 City shall be eighty percent (80%) of the Incremental Revenues generated from the Development Area, and the maximum number of years the payment of Incremental Revenues to support the development of the Development Area will be made is twenty (20) years.

**SECTION VIII**  
**Description of Development Area**

A detailed description of the Development Area is set forth in **Exhibit A** attached hereto and incorporated herein.

**SECTION IX**  
**Description of Project; Costs**

A detailed description of the individual projects that collectively constitute the Project is set forth in **Exhibit B** attached hereto and incorporated herein. 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 **Exhibit C** attached hereto and incorporated herein, subject to further amendment with approval by the City. Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that the Project may be changed and modified so long as the Project continues to satisfy the requirements of a Mixed-Use Project under the Act and any other requirements set forth in the Tax Incentive Agreement.

**SECTION X**  
**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 and that more specific details of the nature of each aspect of financing the Project shall be more particularly contained in any Private Financing and other documents at the time that each aspect of the financing needed for the Project is obtained. However, the pledge of Incremental Revenues herein to support the Project shall not be modified without the specific approval of the City, State and Developer for as long as the Master Development Agreement remains in effect.

**SECTION XI**  
**Commencement Date; Activation Date; Termination Date**

This Agreement shall commence and be effective as of the date of execution hereof by the City. The Activation Date (as defined in the Act) for the pledge of Incremental Revenues as set forth in Section VI hereof shall be determined by the City upon request from the Developer in accordance with the TIF Documents and the Act. This Agreement shall terminate upon the Termination Date. This Agreement shall not terminate upon the execution of any deeds or other agreements required or contemplated by this Agreement, or referred to herein, and the provisions of this Agreement shall not be deemed to be merged into the deeds, or any other such deeds or other agreements, it being the intent of the parties hereto that this Agreement shall survive the execution and delivery of any such agreements.

**SECTION XII**  
**Default**

If the City or the Agency shall default in its obligation to make payments of Incremental Revenues set forth herein (a "Defaulting Party"), 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 City 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 XIII** **Governing Law**

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

### **SECTION XIV** **Severability**

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

### **SECTION XV** **Force Majeure**

The City shall not be deemed to be in default in the performance of any obligation on such parties' part to be performed under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non performance of such obligation shall be directly caused by Unavoidable Delays; provided, that within fifteen (15) days after the commencement of such Unavoidable Delay, the non performing party shall notify the other party in writing of the existence and nature of any such Unavoidable Delay and the steps, if any, which the non-performing party shall have taken or planned to take to eliminate such Unavoidable Delay. Thereafter, the non-performing party shall, from time to time, on written request of the

other party, keep the other party fully informed, in writing, of further developments concerning such Unavoidable Delay and the effort being made by the non-performing party to perform such obligation as to which it is in default. All provisions of any construction schedule shall be adjusted in accordance with such Unavoidable Delay.

**SECTION XVI**  
**Notices**

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

If to the City:	Midway City Hall 101 East Main Street Midway, Kentucky 40347 Attn: Mayor of Midway
With a Copy to:	Midway City Hall 101 East Main Street Midway, Kentucky 40347 Attn: Midway Legal Counsel
If to the Agency:	Midway City Hall 101 East Main Street Midway, Kentucky 40347 Attn: Mayor of Midway
If to the Developer:	Dennis Anderson, President Anderson Communities, Inc. 1720 Sharkey Way Lexington, KY 40511

With a Copy to:

Christine N. Westover and Matt Koch  
McBrayer McGinnis Leslie & Kirkland  
201 E. Main Street, Ste. 900  
Lexington, KY 40507

## **SECTION XVII**

### **Approvals**

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

## **SECTION XVIII**

### **Entirety of Agreement**

As used herein, the term "Agreement" shall mean this Local Participation Agreement and the Exhibits attached hereto. This Agreement together with the other TIF Documents embody the entire agreements and understandings of the parties hereto with respect to the subject matter herein contained, and together the TIF Documents supersede 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 the TIF Documents, 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.

**SECTION XIX**  
**Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. This provision is not intended to approve or give consent to any assignment of this Agreement. Any attempted assignment of this Agreement or any of the TIF Documents shall not relieve the assignor from its obligations thereunder, unless the release of the assignor has been expressly agreed and consented to in writing by all of the other parties thereto.

**SECTION XX**  
**Headings and Index**

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

**SECTION XXI**  
**Exhibits**

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

**SECTION XXII**  
**No Waiver; Construction**

No waiver of any condition or covenant of this Agreement to be satisfied or performed by the City 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. No provisions of this Agreement shall be construed against a party by reason of such party having drafted such provisions.

**SECTION XXIII**  
**Multiple Counterparts**

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

**SECTION XXIV**  
**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 XXV**  
**No Third Party Beneficiary**

Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the City, 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 XXVI**  
**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 XXVII**  
**Assignment of Rights and Delegation of Duties**

Neither the City nor the Agency 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 (i) the Developer shall provide the City with a written instrument signed by the assignee in which the assignee expressly assumes and agrees to perform all of the Developer's liabilities and obligations pursuant to the TIF documents, (ii) the Developer provides the City with prior written notice that includes written copies of all assignment documents intended to effectuate the proposed assignment, and (iii) the City consents to the proposed assignment in advance in writing, which consent shall not be unreasonably withheld. Any unauthorized attempted assignment of this Agreement by any Party shall be null and void and of no force or 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 MIDWAY, KENTUCKY**  
a Kentucky city of the fourth class

**Approval as to Form:**

By: \_\_\_\_\_  
Tom Bozarth, Mayor

\_\_\_\_\_  
Hon. Phil Moloney  
City Attorney for the City of Midway

**THE OFFICE OF THE MAYOR OF  
MIDWAY, KENTUCKY**

By: \_\_\_\_\_  
Tom Bozarth, Mayor

**ANDERSON COMMUNITIES, INC.**

By: \_\_\_\_\_  
Dennis Anderson, President