

DISPOSITION AND DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF COVINGTON, KENTUCKY

AND

COVINGTON POINTE JOINT VENTURE LLC

DATED AS OF [NOVEMBER]____, 2024

Table of Contents

	<u>Page</u>
ARTICLE 1 GENERAL	4
1.1 Defined Terms	4
1.2 Interpretation.....	7
1.3 Incorporation by Reference.....	7
1.4 Calculation of Time	7
ARTICLE 2 GENERAL AGREEMENT; TERM; INSPECTION PERIOD	8
2.1 Relationship of the Parties	8
2.2 Compliance With Applicable Laws.....	8
2.3 Term.....	8
2.4 Inspection Period..	8
2.5 Delivery of Information.	9
ARTICLE 3.....	9
BLOCK A PROJECT ESCROW DEPOSIT; CONVEYANCE OF PROJECT PARCELS TO DEVELOPER; CONDITIONS PRECEDENT	9
3.1 Block A Project Site Purchase Price.....	9
3.2 Escrow Deposit	9
3.3 Conveyance of Block A Project Site to Developer.....	9
3.4 Condition's to Developer's Obligation to Close.....	10
3.5 Conditions Precedent to City's Conveyance of Project Parcels	10
3.6 Notice of Compliance.	11
3.7 Closing Costs and Expenses.	11
ARTICLE 4 BLOCK A PROJECT DESIGN REVIEW	12
4.1 Project Design Review.....	12
4.2 Schematic Designs Submission	12
4.3 City Review	12
4.4 City Approval.....	12
4.5 Amendments to Approved Schematics/Design	12
4.6 Phase II Block A Project Design Approval	13
ARTICLE 5 DEVELOPER'S GENERAL DEVELOPMENT OBLIGATIONS, REPRESENTATIONS AND WARRANTIES; COVENANTS	13
5.1 Developer's General Development Obligation.....	13
5.2 Block A Project Total Projected Cost.....	13
5.3 Grant of Repurchase Option	13
5.4 Completion of the Project..	13
5.5 Mechanics Liens..	14
5.6 Representations, Warranties and Covenants of Developer.....	14

Developer hereby represents, warrants and covenants to the City that:	14
5.7 Indemnification	15
ARTICLE 6 REPRESENTATIVES	15
6.1 Developer Representative	15
6.2 City Representative	16
6.3 Party Representatives	16
ARTICLE 7 ADDITIONAL PROJECT REQUIREMENTS	16
7.1 Developer Additional Development Obligations and Deliverables	16
ARTICLE 8 GOOD NEIGHBOR POLICY	17
8.1 Mitigation of Disturbances and Construction Effects	17
8.2 Feedback Recipient	17
ARTICLE 9 CITY OBLIGATIONS	18
9.1 City Obligations	18
9.2 No Other City Assistance	18
ARTICLE 10 EVENTS OF DEFAULT; REMEDIES	18
10.1 Developer Default	18
10.2 City Default	19
10.3 Cure Period	19
10.4 Costs of Enforcement	19
ARTICLE 11 MISCELLANEOUS	19
11.1 Governing Law	19
11.2 Entire Agreement	20
11.3 Assignment	20
11.4 No Individual Liability	20
11.5 Amendments	20
11.6 Consent in Writing	20
11.7 Captions	20
11.8 Notices	20
11.9 Severability	21
11.10 Counterparts	21
11.11 Contract Language	21
11.12 Survival of Provisions	21
11.13 [Reserved]	21
11.14 Force Majeure	21
11.15 Good Faith	22
11.16 Further Assurances	22

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the “**Agreement**”) is made as of _____, 2024 (the “**Effective Date**”) by and between the CITY OF COVINGTON, KENTUCKY, a Kentucky City of the Home Rule class (“**City**”) and COVINGTON POINTE JOINT VENTURE, a Kentucky limited liability company (together with its permitted assigns “**Developer**”). The City and Developer are sometimes referred to collectively as the “**Parties**”.

RECITALS

A. In August 2020, the City acquired an approximately 23-acre redevelopment site (the “**Development Site**”) from the U. S. General Services Administration to facilitate the redevelopment of the Development Site into a mixed-use riverfront development with supporting public infrastructure improvements, which redevelopment project is commonly referred to as the Covington Central Riverfront Development (the “**Development**”);

B. To initiate the Development, the City undertook the demolition of the improvements located on the Development Site and commissioned Reconnecting Covington: Covington Central Riverfront Strategic Master Plan (the “**Master Plan**”) to establish a development vision for the Development and the Development Site;

C. The Master Plan contemplates that the Development be comprised of private development located on individual development blocks (Blocks A through Q) (each a “**Block**”) to be undertaken by developers selected by the City;

D. The Block A Project Site is an approximately .85 acre parcel of real property (comprising a portion of Kenton County Parcel Identification Number 054-12-03-001.00) located in Block A of the Development and is located and is bounded by Fourth Street to the south, Russell Street to the east, Stewart Alley to the north, and Johnson Street to the west, as further depicted and described on attached Exhibits A-1 and A-2 (the “**Block A Project Site**”);

E. To facilitate the Block A Project (defined below), the City will construct a planned alley known as Stewart Alley and extend portions of Russell Street and Washington Street North from Fourth Street for approximately 150 feet as depicted on the Block A Site Plan attached under Exhibit A-1;

F. The City has agreed herein to cooperate with the Developer to subdivide the Block A Project Site, at Developer’s sole cost and expense, into twelve (12) individual parcels consisting of (i) ten (10) parcels for the construction and installation of single-family detached homes (the “**Single-Family Lots**”), and (ii) two (2) parcels for the construction of mixed-use commercial development consisting of ground floor commercial space and upper floor condominium units or apartment units (the “**Mixed-Use Lots**” and, together with the Single-Family Lots, the “**Project Parcels**” or each a “**Project Parcel**”);

G. In furtherance of the Master Plan and in response to the City’s Request for Proposals, the Developer has proposed in its initial proposal attached hereto as Exhibit B (the “**Initial Proposal**”) to redevelop the Block A Project Site into a residential and mixed-use development, which will entail the installation, construction, equipping and financing of ten (10)

detached single-family homes comprised of between 1,700 and 2,500 square feet on the Single-Family Lots and two (2) mixed-use commercial buildings with approximately 2,400 square feet of ground floor commercial space and second and third floor condominium units or apartment units on the Mixed-Use Lots (collectively, the “**Block A Project**”), which will be phased such that (i) the first phase of the Block A Project will consist of the installation, construction, equipping and financing of two (2) single-family homes and the mixed-use commercial building to be located at the corner of Fourth Street and Russell Street (the “**Phase I Block A Project**”), and (ii) the second phase of the Block A Project will consist of the installation, construction, equipping and financing of eight (8) single-family homes, and the mixed-use commercial building to be located at the corner of Fourth Street and Johnson Street (the “**Phase II Block A Project**”);

H. The Block A Project Site is located in the City Center Covington Development Area (the “**Development Area**”), which was established pursuant to Ordinance No. O-58-12 adopted on December 20, 2012, as amended by Ordinance No. O-16-19 adopted on June 11, 2019 (the “**TIF Ordinance**”);

I. Pursuant to the TIF Ordinance, the City has committed to contribute 80% of the Incremental Revenues derived from the Development Area to pay Approved Public Infrastructure Costs;

J. In furtherance of the Development, the Commonwealth of Kentucky (the “**State**”) has approved a 30-year “Signature TIF” for the Development, which makes available 60% of the Incremental Revenues attributable to (i) State sales tax revenues within the Development Area, (ii) State ad valorem real property taxes within the Development Area, and (iii) State income taxes attributable to businesses operating within the Development Area; and

K. Pursuant to the Tax Incentive Agreement dated as of May 26, 2022 and entered into between the City and the Commonwealth (the “**Tax Incentive Agreement**”), the State has committed up to \$45,500,000 in State Incremental Revenues to pay Approved Public Infrastructure Costs.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 GENERAL

1.1 **Defined Terms.** In addition to other terms defined herein, as used in this Agreement, the following terms shall have the meanings indicated below.

“**Applicable Laws**” shall mean all applicable local, state and federal laws, codes, rules and regulations, including, but not limited to, all applicable planning, zoning and subdivision regulations and Environmental Laws.

“**Baseline Site Work**” shall mean the infrastructure site work set forth on attached **Exhibit C.**

“Commencement of Construction” or “Commenced Construction” or “Commence Construction” means with respect to each Project Parcel, (i) the Developer’s completion of the installation of all footings and foundations for the corresponding improvements together with (ii) the commencement of construction of the vertical components of such improvements.

“Completion Requirements” means: (a) completion of the Block A Project, substantially in accordance with this Agreement; and (b) completion of all of the Block A Project in conformity with existing zoning and environmental laws and restrictions of record, and free and clear of any and all liens and claims with respect to public funds, or with respect to the Block A Project Site, for labor performed or material furnished in connection with the construction and completion of the Block A Project.

“Continuous Construction” or “Continuously Construct” means the construction of any individual improvements upon a Project Parcel without a Significant Delay.

“Environmental Laws” shall mean and include any and all federal, state or local laws, regulations, codes, statutes, rules, decrees, licenses, permits, approvals or authorizations, ordinances, decisions, orders, judgments or requirements of any federal, state, county or municipal court, body, department, commission, board, bureau or agency having jurisdiction relating to pollution or the environment, including laws and regulations relating to emissions, discharges, releases, migration, generation, storage, handling, disposal, transportation, use, treatment, manufacturing, processing or threatened releases of any Hazardous Substance, all as the same have been and may be from time to time amended, and all regulations adopted pursuant to or under any such statute, rule, law or ordinance (including CERCLA, SARA, RCRA, FWPCA, the Clean Water Act, all as the same have been and may be from time to time amended) and all legally binding requirements regarding petroleum storage tanks and petroleum storage tank corrective action.

“Environmental Losses” means any and all losses, liabilities, damages, demands, claims, actions, judgments, causes of action, defects in title, assessments, penalties, costs and expenses (including, without limitation, the reasonable fees and disbursements of outside legal counsel and accountants and the reasonable charges of in-house legal counsel and accountants), and all foreseeable and unforeseeable consequential damages, suffered or incurred, by any Indemnified Party, arising out of or as a result of: (a) the occurrence of any event or activity which results in any Hazardous Substance Activity (as hereinafter defined); (b) any violation of any applicable Environmental Laws (as hereinafter defined) relating to the Block A Project Site or to the Developer’s use, occupancy or operation thereof; (c) any investigation, inquiry, order (whether voluntary or involuntary), hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity, or allegation thereof; or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnified Party, which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (a), (b) or (c) above, or any allegation of any such matters.

“Final Project Plat” shall mean the plat establishing the Project Parcels to be approved by the City and the Developer and recorded against the Block A Project Site in accordance with this Agreement.

“Force Majeure Events” means any of the following events: (a) acts of God, including, without limitation, floods, tornadoes and earthquakes; (b) fires or other casualties; (c) governmental moratorium; (d) acts of a public enemy, civil commotions, riots, insurrections, acts of war, blockades, terrorism, effects of nuclear radiation, or national or international calamities; (e) sabotage; (f) lack of availability of materials or equipment due to the COVID-19 pandemic or related events; (g) condemnation or other exercise of the power of eminent domain; (h) restraint or any similar act by any governmental authority; and (i) the orders of any governmental authority having jurisdiction over the Block A Project.

“Hazardous Substance” shall mean and include any hazardous substance or material which is or may be hazardous to the physical environment, persons or property, including individually and collectively: (a) chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, hazardous wastes, hazardous materials, whether solid, liquid or gaseous, including “hazardous materials”, “hazardous waste”, “toxic waste or substances” or “hazardous substances” as defined under: (i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (“CERCLA”), as amended by the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 et seq. (“SARA”) and as subsequently amended, now or in the future; (ii) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (“RCRA”); (iii) the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq. (“FWPCA”); (iv) the Clean Water Act, 33 U.S.C. Section 1321 et seq. (“Clean Water Act”); or (v) any other Environmental Laws; (b) any materials, substances, or wastes that are toxic, ignitable, flammable, explosive, corrosive, reactive, carcinogenic, or toxic to the reproductive system, and that are regulated by any agency of local government, any agency of the Commonwealth of Kentucky, or any agency of the United States government; (c) asbestos and asbestos-containing materials; (d) oil, petroleum, petroleum fractions, petroleum additives, petroleum based products, and petroleum derived substances; (e) any drilling fluids, produced water or other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; (f) urea formaldehyde foam insulation; (g) lead and lead based paint; (h) polychlorinated biphenyls (PCBs); and (i) freon and other chlorofluorocarbons.

“Hazardous Substance Activity” means any actual, proposed or threatened storage, holding, existence, use, release, migration, emission, discharge, generation, processing, abatement, removal, repair, cleanup or detoxification, disposition, handling or transportation of any Hazardous Substance from, under, into or on the Block A Project Site or the surrounding property, or any other activity or occurrence that causes or would cause such event to exist.

“Incremental Revenues” shall mean those *ad valorem* real property tax revenues and occupational tax revenues attributable to the Block A Project and committed to the Development Area by the City and the County in accordance with the Local Participation Agreement, and, if applicable, the State *ad valorem* real property tax revenues, sales tax revenues and income tax revenues generated by the Block A Project and pledged to reimburse certain “approved public infrastructure costs” as set forth in the Tax Incentive Agreement.

“Parties” shall mean the City and the Developer.

“Phase I Project Parcels” shall mean the Project Parcels upon which the Phase I Block A Project will be constructed.

“Phase II Project Parcels” shall mean the Project Parcels upon which the Phase II Block A Project will be constructed.

“Significant Delay” means a delay or interruption in the construction of the improvements on a Project Parcel that is sixty (60) days or longer and is not caused by the occurrence of Force Majeure Events.

“State” means the Commonwealth of Kentucky, and its related departments and agencies, including, but not limited to, the Kentucky Economic Development Finance Authority.

“Undeveloped Project Parcels” shall mean any Project Parcels that upon an uncured event of default do not contain any vertical improvements, provided if vertical improvements have commenced prior to the issuance of the requisite design approvals from the City, then such Project Parcel shall be deemed an “Undeveloped Project Parcel.”

“TIF” means tax increment financing as implemented pursuant to the TIF Ordinance, the TIF Act, and such other legislation and agreements as may be prepared and approved in accordance with this Agreement.

“TIF Act” means KRS 65.7041 to KRS 65.7083, and KRS 154.30-010 to KRS 154.30-090.

1.2 **Interpretation.** As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word “including” or any variation thereof is used herein, it shall mean “including, without limitation,” and shall be construed as a term of illustration, not a term of limitation. Wherever the word “or” is used herein, it shall mean “and/or.”

1.3 **Incorporation by Reference.** All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and shall be considered a part of this Agreement as if fully rewritten or set forth herein.

1.4 **Calculation of Time.** Unless otherwise stated, all references to “day” or “days” shall mean calendar days and any reference to “business days” means any day that is not a Saturday, Sunday or holiday observed by the Commonwealth of Kentucky.

ARTICLE 2
GENERAL AGREEMENT; TERM; INSPECTION PERIOD

2.1 **Relationship of the Parties.** Notwithstanding any term or condition of this Agreement to the contrary, nothing in this Agreement shall be deemed to create the relationship of principal and agent or to create any joint venture or partnership of any kind by or between the Parties.

2.2 **Compliance With Applicable Laws.** Developer will comply with Applicable Laws in connection with its performance under this Agreement.

2.3 **Term.** Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement shall begin with the Effective Date and expire upon the expiration or sooner termination as provided herein (the “**Term**”).

2.4 **Inspection Period.** Developer and its agents, consultants and contractors shall have ninety (90) days from the Effective Date (the “**Inspection Period**”) to enter upon all portions of the Block A Project Site (collectively, the “**Land**”) to inspect and perform such tests and studies deemed necessary or appropriate by Developer. City hereby grants to Developer a nonexclusive license to enter upon all portions of the Land for the purpose of making such inspections, and City shall cooperate with all parties performing such inspections. The results of all inspections, tests, examinations and studies of any portion of the Land performed during the Inspection Period must be suitable to Developer, in its reasonable discretion. Prior to the expiration of the Inspection Period, Developer may notify City that such results are suitable to Developer by delivering to City a written notice of suitability signed by one of the corporate officers of Developer (the “**Notice of Suitability**”) and setting forth a date not later than forty-five (45) days after the date of the Notice of Suitability (the “**Closing Date**”) for the transfer of the Block A Project Site (the “**Closing**”). No such Notice of Suitability shall be valid and effective unless signed by one of the authorized officers. If Developer fails for any reason to send City the Notice of Suitability by the end of the Inspection Period, then Developer shall be deemed to have delivered the Notice of Suitability, and the parties shall proceed to Closing on the date that is forty-five (45) days after the expiration of the Inspection Period. Provided further, if Developer notifies City in writing at any time prior to the expiration of the Inspection Period that the results of its inspections, tests, examinations or studies are not suitable to Developer, then (x) the City may elect to cure such deficiency prior to Closing, or (y) if the City does not elect to cure such deficiency prior to Closing, then (i) the Developer may waive such deficiency and proceed to Closing, or (ii) the Developer may terminate this Agreement, after which neither party shall have further rights or obligations hereunder except for those which are expressly stated to survive. Upon any termination, Developer shall be entitled to an immediate refund of the Escrow Deposit, and Developer shall promptly restore any physical damage caused to the Land by the aforesaid inspections, tests and other activities, and shall indemnify City for any and all claims of bodily injury or damage to property (including the Land itself) arising out of Developer’s inspections of the Land. Developer shall also indemnify City for liens which may be filed against the Land or any portion thereof by persons or entities employed or contracted by Developer to perform inspections of the Land. Developer’s repair and indemnification obligations under this Section 2.4 shall survive termination of this Agreement for a period of one (1) year.

2.5 Delivery of Information. City shall deliver to Developer copies of all of the documents and materials listed below, to the extent they are in the possession or control of City, within seven (7) days of the Effective Date. Together with a notice that City has delivered all such items in its possession, City shall deliver copies of: (a) all plats of survey of the Land; (b) all title reports, commitments and policies regarding the Land; (c) all zoning documents and applications; (d) any reports, documents and surveys regarding rock tests and other soil conditions affecting the Land; (e) all environmental studies or reports regarding the Land; (f) any wetland delineation studies regarding the Land; (g) any other reports, studies and other materials that pertain to environmental hazards, wetlands, flood studies or any aspect of the physical or environmental condition of the Land, the lots and/or property in the vicinity of the Block A Project Site; (h) any proposed or existing leases, licenses, easements and agreements affecting the Land; and (i) construction drawings for the development of the Block A Project Site.

ARTICLE 3

BLOCK A PROJECT ESCROW DEPOSIT; CONVEYANCE OF PROJECT PARCELS TO DEVELOPER; CONDITIONS PRECEDENT

3.1 Block A Project Site Purchase Price. In consideration for the Block A Project Site, the Developer shall pay to the City the total of \$1,440,000.00 (the “**Purchase Price**”) in accordance with this Section 3.1. The Developer shall pay the City \$720,000.00 at Closing and the remaining balance of the Purchase Price, or \$720,000 will be paid upon completion of the Phase I Block A Project (less the \$20,000 Escrow Deposit) as evidenced by a final certificate of occupancy for the Phase I Block A Project (the “**Deferred Purchase Price**”); provided however, notwithstanding anything to the contrary contained herein, in the event the Developer sells the completed Phase I Block A Project (or any portion thereof) to one or more third-party purchasers prior to final completion of the Phase I Block A Project, then the remaining balance of the Deferred Purchase Price shall be paid in full upon the consummation of such sale or sales. The Deferred Purchase Price shall be secured by a seller’s note, loan agreement, mortgage or such other loan documents as the City may reasonably require (collectively, the “**Deferred Purchase Price Loan Documents**”), which mortgage, shall be a second priority lien subordinate only to Developer’s lender’s first mortgage and will be recorded against the Block A Project Site at Closing.

3.2 Escrow Deposit. The Developer shall make an initial escrow deposit of Twenty Thousand and 00/100 Dollars (\$20,000.00) (the “**Escrow Deposit**”) within five (5) days of the execution of this Agreement. The Escrow Deposit shall be deposited with an escrow agent that is mutually agreeable to the City and the Developer (the “**Escrow Agent**”) and applied toward the Deferred Purchase Price; provided however, upon any termination of this Agreement, unless otherwise agreed to in this Agreement, after the Inspection Period, the City shall be entitled to the Escrow Deposit.

3.3 Conveyance of Block A Project Site to Developer. Provided that the applicable Transfer Contingencies have been satisfied or waived in writing by no later than ten (10) days prior to the Closing Date, the City hereby agrees to transfer fee title to the Block A Project Site and the Developer hereby agrees to purchase from the City the Block A Project Site for a purchase price of \$1,440,000.00, payable as further described herein. On the Closing Date the Escrow Agent shall coordinate Closing in escrow and the following shall occur:

3.3.1 The City shall deliver to the Escrow Agent a duly executed and acknowledged special warranty deed (each a “**City Deed**”) conveying fee simple title to the Block A Project Site.

3.3.2 The Developer shall pay to the City \$720,000.

3.3.3 The Developer shall execute and deliver in favor of the City the Deferred Purchase Price Loan Documents.

3.3.4 The City and the Developer shall execute and acknowledge such other customary closing documents that may be reasonably required to convey the Block A Project Site to the Developer and for the Developer to secure an owner’s policy of title insurance for the Block A Project Site from a title company that is mutually agreeable to the City and the Developer (the “**Title Company**”).

3.3.5 The City and Developer shall deliver such other documents and instruments as may be reasonably necessary to effectuate the intent of this Agreement.

3.4 Condition’s to Developer’s Obligation to Close. Developer’s obligation to close on the purchase of the Block A Project Site is contingent upon the satisfaction of all of the following conditions (collectively, “**Developer’s Closing Conditions**”):

3.4.1 Prior to the expiration of the Inspection Period, the City and the Developer shall have agreed upon the Final Project Plat, and the Final Project Plat shall have been approved and recorded by all applicable governmental authorities.

3.4.2 The Title Company shall be unconditionally prepared to issue a standard ALTA owner’s form title insurance policy insuring good and marketable title to the Block A Project Site.

3.4.3 The Developer shall have received approvals of boundary and utility surveys certified to Developer for the Block A Project Site.

3.4.4 The Developer shall have issued the Notice of Suitability.

3.4.5 In the event any of the foregoing Developer’s Closing Conditions are not satisfied on the Closing Date, then the Developer may elect to: (A) waive in writing the corresponding Developer’s Closing Condition, (B) terminate this Agreement, after which the Developer shall receive the Escrow Deposit as compensation for the City’s failure to satisfy such Developer’s Closing Condition, or (C) extend the time for the satisfaction of the corresponding Developer’s Closing Condition to be satisfied, in which event the Closing shall be adjusted accordingly.

3.5 Conditions Precedent to City’s Conveyance of Project Parcels. Prior to the Closing Date, the City shall have issued a Notice of Compliance (defined herein) establishing that each corresponding contingency (each a “**Transfer Contingency**” or, together the “**Transfer Contingencies**”) has been satisfied or waived:

3.5.1 There shall be no Developer Default (as defined herein) or City Default (as defined herein) hereunder beyond any applicable notice and cure period.

3.5.2 The City shall have recorded the Final Project Plat to create the Project Parcels.

3.5.3 The Developer has acquired, or demonstrated prior acquisition of, a City of Covington Occupational/Business Regulatory License.

3.5.4 The City shall have issued an approval letter for the schematic design of the Phase I Block A Project.

3.5.5 The Developer shall have been issued all required and necessary building permits by Planning & Development Services of Kenton County for the Phase I Block A Project.

3.5.6 The Developer shall have executed and delivered a Repurchase Option in the form attached hereto as Exhibit ____ (the “**Repurchase Option**”), as described and defined in Section 5.3 below, in favor of the City for the Project Parcels to be recorded on the Closing Date.

3.5.7 The Developer shall have submitted a final expense budget for the Phase I Block A Project together with evidence of sufficient capital to undertake the Phase I Block A Project as well as a preliminary expense budget for the Phase II Block A Project, which shall be updated from time to time and delivered to the City prior to the completion of the Phase II Block A Project.

3.5.8 The Developer shall have delivered a schedule of subcontracts and construction contract(s) for the Phase I Block A Project.

3.6 Notice of Compliance. Upon satisfaction of all Transfer Contingencies, the City shall send written notice to the Developer that all of the corresponding Transfer Contingencies have been met (the “**Notice of Compliance**”). If the Developer or City has failed to satisfy one or more of the Transfer Contingencies upon the date that is thirty (30) days prior to the Closing Date, then such deadline shall be extended for so long as the Developer or City diligently pursues such cure to completion and completes the cure within thirty (30) days of receiving notice that such Transfer Contingency has not been satisfied. If the Developer does not cure any of its unsatisfied Transfer Contingency within the aforementioned thirty (30) day period, the City may elect in its sole discretion to: (A) waive in writing the corresponding Transfer Contingency, (B) terminate this Agreement, after which the City shall receive the Escrow Deposit as compensation for the Developer’s failure to satisfy the Transfer Contingency, or (C) extend the time for the Developer to cause the corresponding Transfer Contingency to be satisfied, in which event the Closing Date shall be adjusted accordingly.

3.7 Closing Costs and Expenses. Each conveyance shall be exempt from transfer tax. The City shall pay City’s attorneys’ fees and all expenses incurred by City related to the Closing Date. Developer shall pay Developer’s attorneys’ fees, the cost of any title search and survey, the cost for preparation and issuance of an owner’s policy of title insurance and the cost for recording the Final Project Plat, each City Deed (including recording taxes), the applicable Deferred Purchase Price Loan Documents, and the Repurchase Option. By virtue of the City’s ownership of the Block A Project Site, each Project Parcel will be exempt from *ad valorem* taxes during the year in which the Block A Project Site is conveyed. The provisions of this Section shall survive all closings and any termination of this Agreement.

ARTICLE 4
BLOCK A PROJECT DESIGN REVIEW

4.1 **Project Design Review.** Because of the prominent gateway location of the Development Site for the City, during the Inspection Period all schematic designs for the Development Site and the Phase I Block A Project will be subject to the design review process set forth under this Article 4 (the “**Project Design Review**”). The Developer hereby covenants and agrees to cooperate with the City to proceed through the Project Design Review process and acknowledges and agrees that successful completion of the Project Design Review process shall be a condition precedent to the transfer of the Block A Project Site to the Developer. The design of the Phase I Block A Project will be developed and constructed in accordance with those standards described and outlined in the Developer’s Initial Proposal as updated for the initial Project Design Review submittal.

4.2 **Schematic Designs Submission.** The Project Design Review process shall be initiated with the Developer’s submission of schematic designs for the Phase I Block A Project, which designs shall be based upon Developer’s Initial Proposal and otherwise responsive to the Master Plan (the “**Design Framework**”). The schematic designs will include a description of materials, manufacturer links, and product samples when possible.

4.3 **City Review.** Upon receipt of the complete schematic design submittal, City staff and the Board of Commissioners, will review the submittal with reference to the Design Framework. The City’s initial review of submitted schematic designs shall take no longer than thirty (30) days. Following receipt of the City’s comments to the submitted schematic designs, the Developer shall have thirty (30) days to submit updated schematic designs that are responsive to the City’s comments. Each successive round of comments and updates shall be completed in accordance with the foregoing timelines. In the event the City has not issued a formal approval letter for the schematic designs prior to the expiration of the Inspection Period, the Parties may elect to extend this Agreement for a successive ninety (90) day period during which the schematic designs shall be reviewed for final approval (the “**Extended Design Review Period**”). In the event the City has not approved the schematic designs by the expiration of the Extended Design Review Period, Developer shall be entitled to an immediate refund of the Escrow Deposit, and thereafter neither Party shall have any further obligation to the other hereunder, except such obligations that survive termination by express provision herein, and except that Developer shall promptly restore any physical damage caused to the Land by any inspections, tests and other activities, and shall indemnify City for any and all claims of bodily injury or damage to property (including the Land itself) arising out of Developer’s inspections of the Land. Developer shall also indemnify City for liens which may be filed against the Land or any portion thereof by persons or entities employed or contracted by Developer to perform inspections of the Land. Developer’s repair and indemnification obligations under this Section 4.3 shall survive termination of this Agreement for a period of one (1) year.

4.4 **City Approval.** After the City has reviewed and approved the schematic designs, the City shall send a formal approval letter to the Developer documenting such approval and outlining in detail the final schematic design and the exterior materials selected.

4.5 **Amendments to Approved Schematics/Design.** If the Developer determines that any substantial modifications or amendments are required to the approved schematic designs, any such

modifications or amendments will be subject to the Project Design Review process described in this Article 4. The Developer's obligation to resubmit any substantial deviations from the approved schematic designs shall survive the transfer of the Block A Project Site and/or the termination of this Agreement.

4.6 Phase II Block A Project Design Approval. Prior to Commencement of Construction of the Phase II Block A Project, the Developer shall secure design approvals for the improvements comprising the Phase II Block A Project in accordance with the procedures set forth under this Article 4. Failure to secure the requisite design approvals for the Phase II Block A Project in accordance with this Article shall constitute an event of default hereunder and the City shall have the right to repurchase any Undeveloped Project Parcels in accordance with the Repurchase Option.

ARTICLE 5

DEVELOPER'S GENERAL DEVELOPMENT OBLIGATIONS, REPRESENTATIONS AND WARRANTIES; COVENANTS

5.1 Developer's General Development Obligation. Developer shall utilize commercially reasonable efforts to develop the Block A Project in accordance with the terms and conditions herein. The Developer will oversee and be solely responsible for the development of the Block A Project Site and shall be solely responsible for the payment of all of the costs of acquiring the Block A Project Site, including all closing costs for the conveyance of all Block A Project Site and all surveying fees, recording fees, and transfer fees.

5.2 Block A Project Total Projected Cost. The Developer estimates that the total estimated cost of the Block A Project is \$8,735,000, including the Purchase Price (the "**Block A Project Total Cost**"). Should the Developer need to secure outside or third-party financing, the Developer shall provide the City with a copy of any lender's or third-party appraisal for the Block A Project. For purposes of the City's internal underwriting, the City will secure an appraisal to determine the City's return on investment from the Block A Project based upon the Block A Project Total Cost and the projected tax revenues that are projected to be produced by the Block A Project.

5.3 Grant of Repurchase Option. To secure the Developer's performance of its obligations under this Agreement, the Developer shall grant to the City the Repurchase Option to repurchase any Undeveloped Project Parcels for a purchase price equal to the total portion of the Purchase Price then paid by the Developer, divided by the total land square footage of the Project Parcels, multiplied by the square footage of the Undeveloped Project Parcels to be purchased.

5.4 Completion of the Project. The Developer covenants and agrees that (i) the Phase I Block A Project will be completed by the date that is 30 months after the Effective Date (the "**Phase I Completion Deadline**"), and (ii) the Phase II Block A Project will be completed by the date that is 72 months after the Effective Date (the "**Phase II Completion Deadline**" and each a "**Completion Deadline**" or, together the "**Completion Deadlines**"); provided, however, that the Completion Deadlines may be extended if and to the extent that delays in completion of the Block A Project (or the applicable portion thereof) are caused by a Force Majeure Event, evidenced to the reasonable satisfaction of the City. Furthermore, the Developer hereby covenants and agrees that the corresponding improvements on each Project Parcel will be Continuously Constructed

through completion. The Developer acknowledges and agrees that the agreements made by it under this Section 5.4 shall be absolute, unconditional and fixed when (i) notice of the assertion or filing of any lien or claim with respect to any funds, or with respect to the Block A Project Site, for labor or materials, or (ii) notice of the non-completion of the Block A Project in accordance with this Section, has been forwarded by the City, by certified or registered mail, to the Developer at the address set forth below, absent error (evidenced to the reasonable satisfaction of the City) in such notice. In addition to the remedies available to the City for any breach of this Agreement, the Developer further agrees to hold the City harmless from any and all costs, damages, losses or expenses, including reasonable attorneys' fees, arising out of any failure to Continuously Construct and/or complete the Block A Project in accordance with the Completion Requirements.

5.5 Mechanics Liens. Developer shall not permit any mechanics or other liens to be filed against any of the Project Parcels during construction. If a mechanics' lien shall at any time be filed, Developer shall within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record. Notwithstanding the foregoing, Developer may contest the validity of any claim or demand in good faith and in accordance with such rights to contest as may be permitted in the City's reasonable discretion.

5.6 Representations, Warranties and Covenants of Developer. Developer hereby represents, warrants and covenants to the City that: It (i) is a limited liability company duly organized, validly existing and in full force and effect under the laws of the Commonwealth of Kentucky, and (ii) has all requisite power and authority and all necessary licenses and permits to own, lease and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) It has the authority and power to execute and deliver this Agreement and perform its obligations hereunder, including acquiring, developing, and conveying the Block A Project Site, and it has duly executed and delivered this Agreement.

(c) The execution and delivery by it of this Agreement and the compliance by it with all of the provisions hereof (i) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, its organizational documents or other instruments to which it is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, and (ii) have been duly authorized by all necessary action on its part.

(d) There are no actions, suits, proceedings, inquiries or investigations pending, or to its knowledge threatened, against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Agreement or the development of the Block A Project Site, or if successful would materially impair its ability to perform its obligations under this Agreement to acquire, convey, lease, and develop the Block A Project Site.

(e) Neither it nor any person, company, affiliated group or organization that holds, owns or otherwise has a controlling interest in it has provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List.

(f) It is authorized to and it will undertake the Block A Project in accordance with this Agreement.

5.7 **Indemnification.** Developer and its successors and permitted assignees shall defend, indemnify, and hold harmless the City and its permitted successors and assigns (including any member, officer, director or employee thereof) (collectively, the “**Indemnified Parties**” and each an “**Indemnified Party**”) against, and agree that the Indemnified Parties shall not be liable for, any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, reasonable documented attorneys’ fees and expenses) imposed upon, incurred by or asserted against an Indemnified Party (collectively, “**Contract Liabilities**” and each a “**Contract Liability**”), arising out of or resulting from, or in any way connected with (with the exception of willful misconduct or negligence on the part of an Indemnified Party) all activities undertaken by the City pursuant to this Agreement in furtherance of the Block A Project; all activities undertaken by Developer pursuant to this Agreement in furtherance of the Block A Project, including activities of Developer, or any of its respective contractors or subcontractors to construct the Block A Project; the Developer’s use and occupancy of the Block A Project Site; any breach, violation, or nonperformance by the Developer of any covenant, condition, provision or agreement set forth in this Agreement that is required to be observed and performed by the Developer including any actions taken by the City to enforce such breach, violation, or nonperformance by the Developer; and any act, failure to act, or misrepresentation by the Developer in connection with, or in the performance of any obligation on the Developer part to be performed, related to this Agreement or the Block A Project Site. Provided, however, that the indemnity provided for in this section shall not apply to liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses arising out of, or during, the City’s ownership of the Block A Project Site prior to the Closing Date or for any such claims and liabilities arising out of the negligence or intentional action of any agent, officer, or employee of the City.

REPRESENTATIVES

6.1 **Developer Representative.** The designated representative of Developer for the purposes of this Agreement is as follows:

Covington Pointe Joint Venture LLC
114 W. Pike Street
Covington, KY 41011
Attention: Jodi Funke

6.2 City Representative. The designated representative of the City for the purposes of this Agreement is as follows:

City of Covington, Kentucky
20 West Pike Street
Covington, KY 41011
Attention: Mayor, City Administrator, and Director of the Department Economic Development

6.3 Party Representatives. The designated representative of a given Party under Sections 6.1 or 6.2 above may be changed by such Party by delivering written notice of such change to the other Party.

ARTICLE 7 ADDITIONAL PROJECT REQUIREMENTS

7.1 Developer Additional Development Obligations and Deliverables. The Developer shall satisfy the following requirements:

7.1.1 To ensure that the Development, including the Block A Project, receives the maximum level of support from the Signature TIF, the Developer covenants and agrees to ensure that all contractors, subcontractors, tenants, and licensees secure City of Covington Occupational/Business Regulatory Licenses prior to commencing work or operations at the Block A Project and to report all applicable revenues and payroll to the City and the Commonwealth of Kentucky. The Developer shall also ensure that any general contractor and all sub-contractors on the Block A Project have acquired all other licenses necessary to do business in the City of Covington. The Developer shall provide a list of all contractors and sub-contractors performing work on the Block A Project.

7.1.2 In accordance with the City's Human Rights ordinances, §32.040 et. Seq., the Developer agrees that it shall not discriminate on the basis of any protected class, including but not limited to: race, color, religion, sex, sexual orientation, gender identity, age, national origin, ancestry, marital status, parental status, familial status, place of birth, disability, or natural texture, color of hair, hair styles, or protective hair styles (including, but not limited to braids, locks, twists, and coverings). The Developer shall make a good faith effort that any general contractors and all sub-contractors on the Block A Project shall comply with the provisions of the City's Human Rights ordinances.

7.1.3 The Developer shall make a good faith effort to provide opportunities for minority and woman-owned business a priority and employ and work with skilled people from many backgrounds, cultures, abilities and ethnicities.

7.1.4 The Developer shall ensure any fill removed from the Block A Project Site during the excavation of the Project Parcels will be transported by the Developer to a location within the Development Site designated by the City.

7.1.5 Any streetscape portion of the Block A Project for which the Developer is responsible, shall be completed in accordance with all applicable City Streetscape Design Standards, as established in Commissioners Order No. ORD-240-19.

7.1.6 The Developer shall provide a written, quarterly development and construction update to City staff via the City's form as provided in this Agreement attached hereto and incorporated herein as **Exhibit D**. The Developer will meet as requested with representatives of the City to provide updates as to the status of the Block A Project and to coordinate the various phases of the Block A Project with the City.

7.1.7 The Developer shall coordinate the announcement of the Block A Project in a news conference, news release or other mutually agreed upon format or platform in collaboration with and ensuring the participation of officials representing the City.

7.1.8 Developer shall incorporate the logo, tagline or other graphic provided by the City on any construction site signage in a manner consistent with other development partners, funders and contractors. The City may also request the installation of one (1) banner or sign per block face at a mutually agreeable location(s) on the site or building façade recognizing the City's involvement in the Block A Project. This sign or banner will be provided by the City and will be installed by the Developer.

ARTICLE 8 GOOD NEIGHBOR POLICY

8.1 **Mitigation of Disturbances and Construction Effects**. Prior to construction or performing any maintenance on the Block A Project Site, Developer must receive approval via an encroachment permit issued by the City through its Department of Public Works. During any such construction period on the Block A Project Site, Developer shall make all reasonable efforts to mitigate disturbances to the public caused by construction. This includes, but is not limited to, minimizing obstruction of public right of ways such as streets, sidewalks, and parking areas, adequate cleanup and storage of materials and debris, and advance notice or publication of relevant construction schedules that may affect the public or City agencies. For the sake of clarity, any encroachment into or obstruction of Fourth Street will require the Developer to secure an encroachment permit from the Kentucky Transportation Cabinet District 6 due to Fourth Street's status as a state route. Developer shall also make all reasonable efforts to mitigate effects of construction on air quality and noise level and the limiting of noise generating construction activity to comply with the City's nuisance and noise ordinances. Any construction that is expected to cause an unreasonable disturbance to the public must be approved by the City.

In furtherance of the Developer's good neighbor commitments, the Developer will agree to employ its development experience and expertise to cause its contractors to use construction techniques and materials that minimize noise, dirt, dust and other interference with the surrounding neighborhood.

8.2 **Feedback Recipient**. During any period of construction on the Block A Project site, the Developer must establish a feedback email account and monitor it daily for concerns and complaints. The email address must be distributed to all property owners, business owners and

residents within and adjacent to the construction area. The email address must be publicized on signs posted at the construction site (minimum 2 per block face) inviting the public to “tell us how we are doing” or some similar message communicating the opportunity to provide feedback about how the construction is impacting the community. The Developer shall use best efforts to collect and maintain a list of all property owners, business owners and residents within and adjacent to the construction zone along with their contact information. The Developer will communicate at minimum, monthly with those on the list providing an updated construction schedule with estimated dates and times for specific locations as well as the impact that should be anticipated and activity that will take place. More frequent communication is encouraged, especially when delays or other changes take place.

ARTICLE 9 CITY OBLIGATIONS

9.1 City Obligations. The City agrees to undertake the following obligations in furtherance of the development of the Block A Project Site into the Block A Project: The City agrees to cause the Block A Project Site to be subdivided into the individual Project Parcels and secure approval of the Final Project Plat with the cooperation of the Developer at the Developer’s sole cost and expense.

9.1.2 The City agrees to complete all Baseline Site Work as described on attached Exhibit C. For clarity, the Developer will be responsible for constructing stormwater improvements on the Project Parcels to integrate with the City’s stormwater management system. The City further agrees to coordinate with the Developer regarding any amendments to the plans and specifications for the Baseline Site Work that the Developer desires to be made, provided that if the City approves any such amendments, then any additional cost attributable to such amendment shall become the Developer’s obligation and shall be payable to the City at the time of the City’s execution of any change order evidencing the requested amendment.

9.1.3 The City agrees to install sidewalks on all common or City owned parcels adjacent to the Project Parcels.

9.1.4 The City will further agree to provide timely approvals on design and zoning elements and will work to facilitate an efficient development process by advocating with County entities on issues such as sewer, water, etc. to ensure the Block A Project is completed on time.

9.2 No Other City Assistance. Except for the City’s agreements herein to transfer the Block A Project Site and undertake the obligations set forth in this Agreement, the City shall not be responsible for any costs associated with the Block A Project and the Developer agrees that it shall not request or expect to receive any funding, ad valorem property tax abatements through the issuance of industrial revenue bonds, or other financial assistance from the City in connection with the Block A Project.

ARTICLE 10 EVENTS OF DEFAULT; REMEDIES

10.1 Developer Default. If Developer is declared in default of its performance of any covenant or obligation hereunder by the City after providing written notice and the applicable cure period

has expired without the Developer curing its breach as described below in Section 10.4, in addition to the City's remedy to repurchase any Undeveloped Project Parcels under the Repurchase Option, the City shall have the right to terminate this Agreement and receive payment of the Escrow Deposit then held in the escrow account from Escrow Agent as City's full liquidated damages as a result of such default. The Parties hereby agree that: (i) ascertaining the actual damages in the event of such a default is difficult; (ii) it is impossible more precisely to estimate the damages to be suffered by City upon Developer's default at different times during the Term; (iii) such payment of Escrow Deposit is intended not as a penalty, but as full liquidated damages; and (iv) the amounts of Escrow Deposit held at different times during the Term constitute good faith estimates of the potential damages arising from default by Developer hereunder at those times.

10.2 City Default. If the City is declared in default of its performance of any covenant or obligation hereunder by the Developer after the Developer has provided written notice and the cure period has expired without the City curing its breach as described below in Section 10.3, or if any of City's representations or warranties prove to be false, inaccurate, incomplete or misleading in any material respect, then Developer's sole and exclusive remedy shall be either: (i) to seek specific performance of this Agreement; or (ii) to terminate this Agreement, receive an immediate refund of the entire amount of the Escrow Deposit.

10.3 Cure Period. In the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party hereto, such defaulting Party shall, upon written notice from the non-defaulting Party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party shall upon written notice from any non-defaulting Party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

10.4 Costs of Enforcement. If an action is brought by the City for the enforcement of any provision of this Agreement, Developer, to the extent that Developer is found to be in default or breach of this Agreement, shall pay to the City all costs and other expenses that become payable as a result thereof, including reasonable attorneys' fees and expenses. If an action is brought by the Developer for the enforcement of any provisions of this Agreement, the Developer, in addition to its right to pursue a claim for specific performance, shall be entitled to recoup the Escrow Deposit, as stated in Section 10.2, to defray its costs of enforcement.

ARTICLE 11 MISCELLANEOUS

11.1 Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflict of law provisions that would cause the application of the laws of another jurisdiction.

11.2 Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties concerning the Block A Project and supersedes all prior negotiations, representations or agreements, either written or oral.

11.3 Assignment. The Developer shall not assign this Agreement without the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, provided that the proposed assignment is to either (i) a Developer Affiliate, or (ii) a Qualified Third-Party Developer, in which case, (a) such assignment shall be subject to the terms and conditions of this Agreement concerning the development and timing of the Block A Project as well as the terms and conditions of any other documents that are required to be assigned in conjunction with the Block A Project, and (b) such assignment shall require the Developer and the approved assignee to execute and deliver a Completion Guaranty, substantially in the form attached hereto as **Exhibit F**. Upon the City's written approval of any request to assign this Agreement in whole or in part, the City shall evidence its consent to such assignment by executing an assignment and assumption agreement or similar agreement submitted to the City for review. For purposes of this Section 11.3, "**Developer Affiliate**" shall mean a special purpose entity formed by the Developer to undertake all or a portion of the Block A Project on Developer's behalf in which Developer holds a majority interest; "**Qualified Third-Party Developer**" shall mean a real estate development company with substantially comparable experience and financial capacity to Developer, which comparable experience and financial capacity has been documented for the City prior to the City's approval of the proposed assignment. Notwithstanding anything to the contrary contained herein, no assignment shall release the Developer from the primary obligation to perform the obligations and duties hereunder.

11.4 No Individual Liability. No official, officer, director, elected official, representative, agent or employee of the City shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement. No officer, director, member, representative, agent or employee of the Developer shall be personally liable to the City or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or successor or on any obligation under the terms of this Agreement.

11.5 Amendments. Except as otherwise provided herein, no amendment to this Agreement shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement.

11.6 Consent in Writing. Unless otherwise specifically provided herein, no consent or approval by a Party permitted or required under the terms of this Agreement shall be valid unless the same shall be in writing, signed by the Party by or on whose behalf such consent is given.

11.7 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

11.8 Notices. Any notice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and

shall be sent by overnight courier or registered letter, to the other Party at the address set forth in Article 6 for the designated representatives. Each party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the others in like manner. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice.

11.9 Severability. If any clause or provision in this Agreement shall be held by final judgment of a court of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other clause or provision of this Agreement.

11.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that this agreement and signature page may be transmitted between them by electronic mail, or other electronic transmission method, and that signatures created or transmitted by electronic means, including DocuSign (or any other signature complying with the federal ESIGN Act of 2000 or any applicable Uniform Electronic Transactions Act or Electronic Signatures and Records Act), PDF or JPEG, shall constitute original signatures, shall be deemed to have been duly and validly created and delivered, and shall be valid and binding for all purposes.

11.11 Contract Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement. In the event of any conflict between the body of this Agreement and any Exhibits hereto, the terms and conditions of this Agreement shall govern.

11.12 Survival of Provisions. Section 5.3 shall survive any termination or expiration of this Agreement in accordance with Applicable Laws.

11.13 [Reserved].

11.14 Force Majeure. If Developer is delayed or hindered in, or prevented from the performance or completion of any obligation required under this Agreement by reason of earthquakes; landslides; strikes; lockouts; labor troubles; failure of power; riots; insurrection; war; terrorism (international and domestic); acts of God; federal, state or local regulations, laws, rules or requirements; or other reason of the like nature not the fault of the Developer delayed in performance of its obligation; unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes, but not including lack of financial capacity by Developer ("Force Majeure"), the Developer is excused from such performance for the period of delay. Except as otherwise provided herein, the period for the performance of any such act will then be extended for the period of such delay. In the event Developer claims Force Majeure, it shall take commercially reasonable steps to remove or correct the Force Majeure event, and shall promptly notify the City, within a period of thirty (30) calendar days, when it first learns of the existence of a Force Majeure

condition and Developer will similarly notify the City within a period seven (7) business days, when a Force Majeure is terminated. Notwithstanding anything herein to the contrary, if the Developer fails to notify the City within a period of thirty (30) calendar days, after it first learns of the existence of an event of Force Majeure, then Developer shall be deemed to have waived its right to be excused from performance of its obligations by reason of such event of Force Majeure.

11.15 Good Faith. Whenever in this Agreement any Party is required or permitted to grant approval or consent, take any action or request any other Party to take any action, make decisions or otherwise exercise judgment as to a particular matter, arrangement or term, the Party granting such approval or consent, taking or requesting such action, making decisions or otherwise exercising judgment shall act reasonably and in good faith and, in the case of approvals or consents, shall act with all deliberate speed in making its determination of whether or not to approve or consent to any particular matter and shall not impose conditions on the granting of such approval or consent that the approving or consenting Party does not believe are necessary in connection with such approval or consent.

11.16 Further Assurances. The Parties shall take or cause to be taken any and all other further actions reasonably necessary, required or requested of the other Parties in order to effectuate the terms and conditions herein.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth above.

CITY:

CITY OF COVINGTON, KENTUCKY

By: _____
Joseph U. Meyer, Mayor

DEVELOPER:

COVINGTON POINTE JOINT VENTURE,
a Kentucky limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A-1

Legal Description

Parcel 1: (Former IRS Processing Facility)

Tax Parcel No. 054-12-03-001.00

Group No. 3915

An approximately .88 acre tract of land being a portion of:

THAT LAND LYING IN THE CITY OF COVINGTON, COUNTY OF KENTON, COMMONWEALTH OF KENTUCKY, BEING THE SAME PROPERTY AS RECORDED IN VOLUME 524, PAGE 439, VOLUME 579, PAGE 883, AND VOLUME C398, PAGE 260 IN THE OFFICE OF THE RECORDER, KENTON COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A PK NAIL FOUND (NO ID) LYING AT THE NORTHWEST RIGHT OF WAY INTERSECTION OF EAST 4TH STREET (50' R/W) AND A 30' ALLEY (A/K/A BRENT SPENCE SQUARE), SAID NAIL BEING THE SOUTHEAST CORNER OF THIS TRACT; THENCE WITH THE NORTH LINE OF SAID EAST 4TH STREET AS FOLLOWS: SOUTH $77^{\circ}57'40''$ WEST A DISTANCE OF 659.03 FEET TO A PK NAIL SET; THENCE SOUTH $88^{\circ}51'24''$ WEST A DISTANCE OF 426.70 FEET TO A CONCRETE MONUMENT FOUND; THENCE ALONG A CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 62.28', A RADIUS OF 40.00', WITH A CHORD BEARING OF NORTH $46^{\circ}32'18''$ WEST, A CHORD DISTANCE OF 56.18' TO A PK NAIL SET IN THE EAST RIGHT OF WAY LINE OF JOHNSON STREET (60' R/W); THENCE WITH SAID EAST RIGHT OF WAY LINE NORTH $01^{\circ}49'19''$ WEST A DISTANCE OF 593.51 FEET TO A 1/2" IRON PIN SET; THENCE ALONG A CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 136.64', A RADIUS OF 115.74', WITH A CHORD BEARING OF NORTH $43^{\circ}45'35''$ EAST, A CHORD DISTANCE OF 128.84' TO A PK NAIL SET IN THE SOUTH RIGHT OF WAY LINE OF WEST RIVERCENTER BOULEVARD (60' R/W); THENCE WITH SAID SOUTH RIGHT OF WAY LINE AS FOLLOWS: NORTH $77^{\circ}47'05''$ EAST A DISTANCE OF 350.95 FEET TO A PK NAIL SET; THENCE ALONG A CURVE TURNING TO THE LEFT, HAVING AN ARC LENGTH OF 308.36', A RADIUS OF 664.82', WITH A CHORD BEARING OF NORTH $64^{\circ}29'50''$ EAST, A CHORD DISTANCE OF 305.60' TO A PK NAIL SET; THENCE ALONG A REVERSE CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 67.01', A RADIUS OF 32.99', WITH A CHORD BEARING OF SOUTH $71^{\circ}11'05''$ EAST, A CHORD DISTANCE OF 56.07' TO A PK NAIL SET IN SAID SOUTH RIGHT OF WAY LINE, SAID PK NAIL BEING THE NORTHWEST CORNER OF THE COMMONWEALTH OF KY PROPERTY; THENCE WITH THE WEST LINE OF SAID COMMONWEALTH PROPERTY SOUTH $12^{\circ}25'25''$ EAST A DISTANCE OF 141.48 FEET TO A PK NAIL FOUND (NO ID) IN SAID WEST LINE; THENCE ALONG A CURVE TURNING TO THE LEFT, HAVING AN ARC LENGTH OF 73.52', A RADIUS OF 45.00', WITH A CHORD BEARING OF SOUTH $56^{\circ}01'11''$ EAST, A CHORD DISTANCE OF 65.61' TO A POINT IN THE SOUTH LINE OF SAID COMMONWEALTH PROPERTY, SAID POINT MARKED BY A 5/8" IRON PIN FOUND (ID: HARRIS) LYING SOUTH $02^{\circ}26'57''$ WEST A DISTANCE OF 1.40'; THENCE WITH SAID SOUTH LINE NORTH $78^{\circ}03'21''$ EAST A DISTANCE OF 369.74 FEET TO A POINT IN THE WEST RIGHT OF WAY LINE OF MADISON AVENUE (66' R/W), BEING THE SOUTHEAST CORNER OF SAID COMMONWEALTH PROPERTY, SAID POINT BEING MARKED BY A PK NAIL FOUND (NO ID) LYING NORTH $60^{\circ}30'32''$ EAST A DISTANCE OF 0.59'; THENCE WITH SAID WEST RIGHT OF WAY LINE SOUTH $12^{\circ}06'39''$ EAST A DISTANCE OF 417.90 FEET TO A POINT IN THE NORTH

LINE OF A 30' ALLEY (A/K/A BRENT SPENCE SQUARE), SAID POINT MARKED BY A PK NAIL FOUND (NO ID) LYING NORTH 72°45'57" EAST A DISTANCE OF 2.89'; THENCE WITH THE NORTH LINE OF SAID ALLEY SOUTH 77°33'35" WEST A DISTANCE OF 214.94 FEET TO A PK NAIL SET; THENCE WITH THE WEST LINE OF SAID ALLEY SOUTH 12°00'44" EAST A DISTANCE OF 218.25 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 881,320 SQUARE FEET OR 20.232 ACRES, ACCORDING TO A SURVEY BY YOUNG HOBBS & ASSOCIATES, 1202 CROSSLAND AVENUE, CLARKSVILLE, TN.

Exhibit A-2

Block A Site Plan

(See attached.)

Thursday, November 16, 2023

COVINGTON CENTRAL RIVERFRONT - BLOCK A



1 Architectural Site Plan

1

Springhouse
ARCHITECTS



MIXED USE
RETAIL 1st Floor
RESIDENTIAL
2nd & 3rd Floors
APPROX. 2800 sf/FLR

TYPICAL
SF HOME
30' WILLOT
APPROX.
1700-2500sf

MIXED USE
RETAIL 1st Floor
RESIDENTIAL
2nd & 3rd Floors
APPROX. 2400 sf/FLR

TYP 20' DEEP
PARKING PAD

30'- TYPICAL

TYP 2-CAR
GARAGE

CONTINUOUS
WROUGHT
IRON RAILING

TYP. FRONT
LANDSCAPING

STEWART ALLEY

30'- TYPICAL



EXHIBIT B

Initial Proposal

(see attached.)

City Of Covington, Kentucky

Single Family Detached
Residential Development Services

Covington Central Riverfront Development (“CCR”) Block A



Submitted by:

Jodi Funke, Co-Developer
Covington Pointe Joint Venture
114 W Pike St
Covington, KY 41011
513-256-6208
jodi@funkereg.com

Submitted to:

Peter Hager, Procurement Officer
City of Covington Department of Economic
Development
20 W Pike St
Covington, KY 41011
859-292-2178
peter.hager@covingtonky.gov

2. Proposal

2.1 Description

A new and prosperous chapter in the city's history –

Covington, located at the confluence of the Licking and Ohio Rivers, has a rich historical background that dates back to its founding by John Gano, Richard Gano, and Thomas Carneal in 1814. The establishment of the Covington Company marked the beginning of the city's development and growth.

The founders' decision to name their enterprise after General Leonard Covington, a respected American officer, reflected a sense of honor and tribute to someone who had a significant impact on the region during the War of 1812. General Covington's connection to the area, where he once trained troops, added a historical and patriotic dimension to the founding of Covington.

Over the years, Covington has evolved into a vibrant city with a unique blend of history, culture, and community spirit. The commitment and determination of the early founders have set the stage for the city's development into what is now a place that many people know and love.

Our name – *Covington Pointe Joint Venture* – suggests a contemporary development that aims to build upon the city's historical foundation. This new venture aspires to contribute to Covington's growth, fostering economic development, community engagement, and a positive future for residents and visitors alike.

As with the founding of Covington in 1814, the hope is that Covington Pointe Joint Venture will play a role in shaping the city's future and continue the legacy of progress and prosperity that began centuries ago at "the Point" along the banks of the Licking and Ohio Rivers.

Covington Pointe is not just a collection of houses; it is an embodiment of the vision - "A place you want to call home, in the neighborhood you want to live." Our proposal for the construction of ten single-family homes, complemented by mixed-use buildings on each end, seeks to seamlessly integrate into the existing fabric of Covington, creating a vibrant and unique residential enclave.

Architectural Integration: The architectural design for Covington Pointe is carefully curated to seamlessly blend into the rich tapestry of Covington's existing urban landscape. The single-family home streetscape is conceived to mirror the alternating heights, materials, and styles of the surrounding Covington streets, fostering a sense of continuity and unity within the neighborhood.

Materials Inspired by Tradition: Drawing inspiration from the historical context of Covington, our proposal embraces materials that have a deep-rooted presence in the area's architectural heritage. Brick, painted brick, frame houses, and stucco will be thoughtfully employed, paying homage to the diverse architectural styles that define Covington's neighborhoods.

Distinct Identity within Covington: Covington Pointe is more than just an infill development; it serves as the gateway to an exciting new chapter in Covington's growth. Each of the ten homes is envisioned as a

unique piece of art, reflecting individuality and character. Covington Pointe will carve its own identity while embracing the eclectic charm found in other beloved Covington neighborhoods.

Our Vision: As a Covington-based business, Covington Pointe JV is driven by a passion for distinctive and interesting home styles. We understand that homes are more than structures; they are reflections of the individuals who inhabit them. Our commitment to removing stress from the home-building process, paired with open communication, ensures a personalized and enjoyable experience for our clients.

Community Engagement: Beyond building beautiful homes, Covington Pointe JV envisions contributing to the community. We are committed to supporting local non-profits, furthering our dedication to making a positive impact in the neighborhoods we serve. Under this redevelopment project, we propose to donate a portion of the sale of each home to a Covington-based nonprofit organization.

Architectural Progression and Design Features: Covington Pointe features four distinct floor plan designs, each showcasing a progression of architecture with small footprint homes designed to maximize city living. These two- and three-story homes seamlessly blend contemporary styling with turn of the century modern and bungalow influences, complementing the preserved church building next door and harmonizing with the surrounding neighborhood. Our home designs range from 1,250 square feet for condos up to 2,500 square feet for single-family homes. All buildings will be two or three stories.

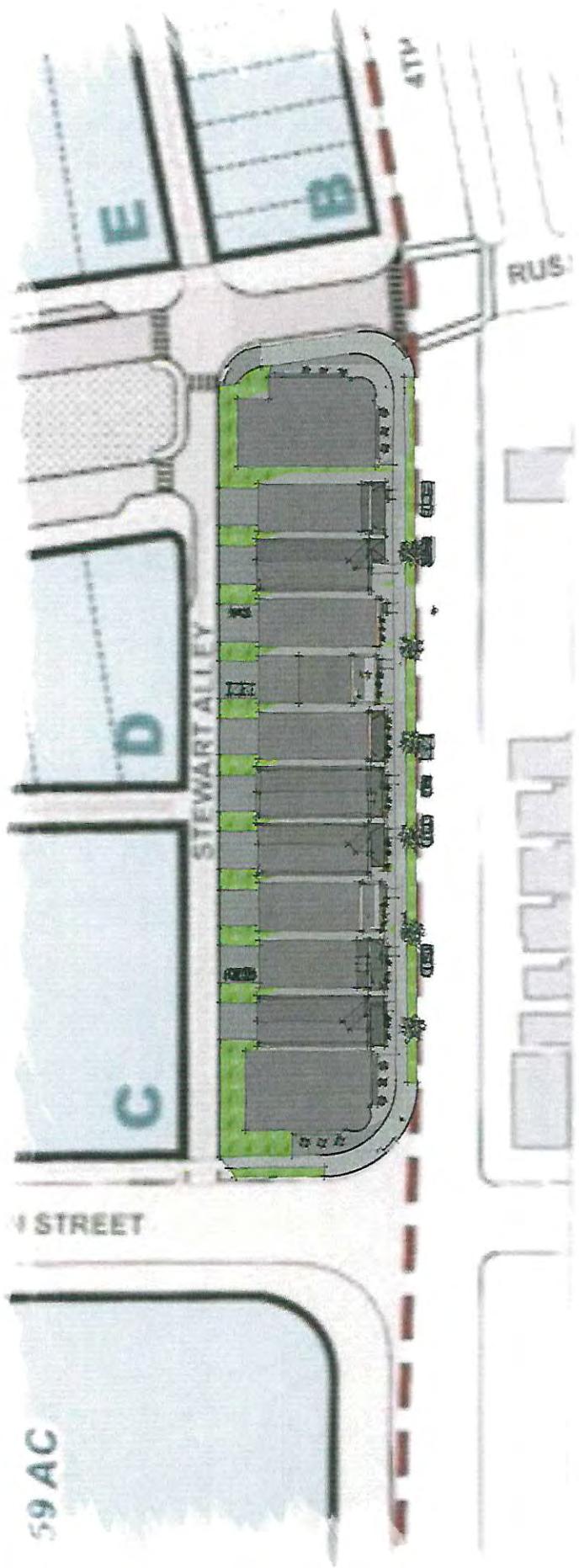
Thoughtful Design for City Living: Designed for busy individuals seeking the comfort of a house without the responsibility of extensive yard maintenance or shared walls, Covington Pointe offers a sophisticated and playful aesthetic. Each home boasts a quaint gated yard, providing residents with private outdoor spaces within the urban setting.

Revitalizing Communities: Covington Pointe is not just about construction; it's about revitalization. Our focus is on breathing life back into once-lively sites that have fallen dormant. We are dedicated to repurposing inactive spaces into vibrant communities, contributing to the overall mosaic of the city.

In conclusion, Covington Pointe is a testament to the belief that a home is more than an address; it is a place where lives intertwine, where communities thrive, and where the city's rich history meets its promising future. Each home within Covington Pointe is not just a dwelling; it is a learning opportunity, a contributor to the city's mosaic, and a step toward creating lasting, positive impacts on the community.

2.2 Proposed Site Plan

Our proposed site plan is provided on the following page. The typical lot is 30 feet wide; and the typical home is three stories with 1,700-2,500 square feet. Our plan includes two mixed-use buildings, one on each end, with first floor commercial space and second and third floor residential space. Each single-family home has a parking pad off of Stewart Alley.



2.3 Elevations and Renderings

We have prepared a variety of conceptual designs for the City's consideration. The following renderings showcase these concepts, which bring historic Covington architecture together with modern urban design.



Figure 7: Multiple architectural styles line Fourth St, seamlessly integrating with the surrounding communities.



Figure 8: Attractive landscaping and walkways create a sense of community.



Figure 9: Wrought iron fencing lines the sidewalk, extending the use of this common feature throughout Covington.



Figure 10: A corner mixed-use building exemplifies the turret feature beloved by Covington residents.



Figure 11: The mix of urban and natural settings showcase the personality of Covington.

CCR Development

Construction

Construction - Single Family	\$3,600,000
Construction - Condos	\$1,080,000
Construction - Commercial Space	\$450,000
Land Purchase - Base Price	\$1,200,000
<i>Total Construction</i>	\$6,330,000

Soft

Special Inspections	\$12,000
Architectural Fees	\$70,000
Civil Engineer	\$25,000
Builders Risk Insurance	\$10,000
Utilities	\$10,000
Loan/Closing Fees	\$70,000
Construction Loan Interest	\$200,000
Sales Commission/Fee	3% \$240,000
<i>Total Soft</i>	\$637,000

Total Project Cost	\$6,967,000
--------------------	--------------------

Sources of funds

Construction Loan	\$5,130,000
Developer Equity	\$1,837,000
<i>Total Sources</i>	\$6,967,000

Sales Income

Market Rate Homes

Sale of Homes (\$600,000 each)	\$6,000,000
Sale of Condos (375,000 each)	\$1,500,000
Sale of Commercial Units (\$250,000 each)	\$500,000
<i>Total Income</i>	\$8,000,000

Profit	\$1,033,000
ROI	14.83%

Covington Pointe Joint Venture
114 W Pike St
Covington, KY 41011
jodi@funkereg.com
513-256-6208

June 14, 2024

Subject: Letter of Intent to Purchase Real Estate

To whom it may concern;

I am writing this letter to express my sincere interest in purchasing the property known as Block A of CCR.

Purchase Price:

- I am prepared to offer a purchase price of \$1,200,000 for the property. This amount is based on a comprehensive analysis of market conditions, comparable property sales, and the unique attributes of the subject property.
- I would like to offer a shared benefit to the City of Covington. For every \$50,000 over the projected sale price, we will pay \$10,000 to the City. I believe that as the neighborhood continues to be built out, the sale prices will continue to increase which will be beneficial to both, Covington Pointe Joint Venture and the City of Covington.

Financing:

- My intention is to pay cash for the property.

Closing:

- I propose a closing date of no later than 30 days from the completion of all necessary sitework by the City of Covington.

Earnest Money Deposit:

- Upon the execution of a formal purchase agreement, I am prepared to provide an earnest money deposit of \$20,000 as a demonstration of my commitment to the transaction. This deposit will be held in escrow until the closing date.

I am enthusiastic about the prospect of acquiring this property and believe that our collaboration will be mutually beneficial. I am open to discussing any terms and conditions that may facilitate a smooth and efficient transaction.

Thank you for considering my proposal for Block A of the CCR development. I look forward to the opportunity to discuss this matter further.

Sincerely,

Jodi Funke

EXHIBIT C

Baseline Site Work

- Construction of Third Street from Russell Street to Johnson Street.
- Construction of Washington Street extension from Fourth Street to the existing convention center south property line.
- Construction of Russell Street extension from 3rd Street to 4th Street.
- Construction of Stewart Alley from Johnson Street to Russell Street.
- Installation of new sidewalks adjacent to the Block A Project Site located along Fourth Street and Russell Street, in each case, in compliance with the City's Streetscape Standards. Sidewalk installation will be phased such that substantial completion will be achieved after substantial completion of the Block A Project.
- Extension of all utilities to the property line of the Block A Project Site, including stormwater utilities.

EXHIBIT D

Form of Repurchase Option

(See attached.)

REPURCHASE OPTION

This REPURCHASE OPTION (this "Option") is made as of the Effective Date (as defined on the signature page hereof), by [COVINGTON POINTE JOINT VENTURE], a Kentucky limited liability company, (the "Developer"), and with an address of which is _____ for the benefit of the **CITY OF COVINGTON, KENTUCKY**, a Kentucky city of the Home Rule Class, 20 W. Pike Street, Covington, Kentucky 41011 (the "City").

Recitals:

A. By virtue of a Special *Warranty Deed* from the City recorded on _____, 2025 in Deed Book _____, Page _____, Kenton County Clerk's Office, the Developer owns the real property located at _____ in Covington, Kentucky, in the Covington Central Riverfront District, as more particularly described on Exhibit A (Legal Description) hereto (the "Property").

B. Pursuant to a certain *Disposition Development Agreement* dated as of _____, 2024, between the City and Developer (the "**Agreement**"), Developer is obligated to construct upon the Property a mixed-use development project comprised of: (i) a first phase consisting of (a) a three-story mixed-use commercial building with approximately 2,400 square feet of ground floor commercial space and two floors of condominium units or apartment units, and (b) two detached single-family homes (together, the "Phase I Block A project"), and (ii) a second phase consisting of (a) a three-story mixed-use commercial building with approximately 2,400 square feet of ground floor commercial space and two floors of condominium units or apartment units, and (b) eight (8) detached single-family homes (together, the "Phase II Block A Project" and, together with the Phase I Block A Project, the "**Project**"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement.

C. As a condition of the City's execution of the Agreement and disposition of the Property, the City required that the Developer memorialize the City's purchase option pursuant to the Agreement in this Option.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer does hereby declare that the Property is and shall be subject to the provisions of this Option as set forth below.

1. **Purchase Option.** In the event of any uncured event of default under the Agreement, the City shall have the option to, in the City's sole and absolute discretion and exercisable no later than the date that is 365 days after the date that the City has provided notice to Developer of such event of default, purchase any or all Undeveloped Project Parcels (as defined in the Agreement), together with any improvements thereon and appurtenant rights, for the Purchase Price (as defined below), on and subject to the terms of the Agreement and this Option. If the City determines that an uncured event of default has occurred, the City may elect to exercise its option to purchase the Undeveloped Project Parcels, by delivering to the Developer a written notice of the uncured event of default and require that the Developer convey the Undeveloped Project Parcels to the City or its designee on a specified date in accordance with this Option (the "**Purchase Notice**"). This Option shall remain executory until Developer has achieved completion of the Phase II Completion Deadline (as defined in the Agreement). For the avoidance of doubt, in no event shall this Option be deemed terminated in the event that Developer exercises its termination rights pursuant to the Agreement and (y) in the event that the City terminates the Agreement prior to Closing, this Option shall also terminate. Upon written request by Developer following the expiration or termination of the City's rights with respect to the Property and this Option, the City agrees that it shall promptly execute and deliver to Developer a document in recordable form releasing its purchase option. Exercise of the City's option to purchase shall in no way limit the City's right to avail itself of any remedies

it may have pursuant to the Agreement or otherwise.

2. Exercise of Option to Purchase. The closing of the conveyance of the Property shall take place on the date designated in the Purchase Notice, which date will be at least ten (10) business days after the date of the Purchase Notice. Developer shall pay all closing costs associated with such conveyance. All real estate taxes and assessments shall be prorated as of the date of the closing. At the closing, the Developer shall convey marketable title to the Property, to the City by special warranty deed, free and clear of all liens and encumbrances, except for those encumbrances that the Developer, in good faith, established as part of the anticipated development of the Project and which do not materially impair the City's rights or interests under this Option. It is expressly acknowledged that if the Purchase Price is insufficient to pay off any lien then encumbering the Property, the Developer will be solely responsible for discharging any excess obligations, over and above the Purchase Price and causing the liens or other encumbrances not permitted by this Section 2 to be released of record at or before the closing of the conveyance of the Property pursuant to this Option.

3. Inspection; Assignment. Without in any way limiting any other rights the City has under the Agreement to inspect the Property or any of the inspection rights the City otherwise legally possesses, whether in connection with its police powers, permitting, or otherwise, the Developer hereby agrees that the City and its designees may enter upon the Property to conduct reasonable due diligence regarding the condition of the Property at reasonable times following delivery of the Purchase Notice in connection with the exercise of the purchase option hereunder by the City or its designee. For the avoidance of doubt, the Developer expressly agrees that the City may assign its rights under this Option to any other party, in the City's sole and absolute discretion.

4. Purchase Price. The term "**Purchase Price**" means: (i) the portion of the Purchase Price, then paid by the Developer to the City under the Agreement, divided by (ii) the total square footage of the Property, and then multiplied by the square footage of the Undeveloped Project Parcels to be purchased.

5. Enforcement of the Option. The City is the beneficiary of this Option. In the event of the Developer's breach of any of the provisions of this Option, the City shall have the right to take such remedies as may be available under law, equity, or contract. The rights and remedies of the City are cumulative, and each and every provision of this Option shall apply to and be enforceable by an action at law or equity instituted by the City against the Developer. Any failure of the City to enforce any provision of this Option shall not be deemed a waiver of the City's right to do so thereafter. Except as otherwise provided herein, this Option shall not be amended, released, extinguished, or otherwise modified without the prior written consent of the City, which consent may be withheld in its sole and absolute discretion.

6. Options to Run with the Land. The Developer intends, declares, and Options on behalf of itself and its successors and assigns that this Option and the provisions contained herein (a) shall be Options running with the land and are binding upon the Developer and its successors-in-title, (b) are not merely personal Options of the Developer, and (c) shall bind the Developer and its successors and inure to the benefit of the City. The Developer hereby agrees that any and all requirements of the laws of the Commonwealth of Kentucky to be satisfied in order for the provisions of this Option to constitute restrictions and Options running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate or privity of contract are also deemed to be satisfied in full.

7. Severability. Each provision of this Option and the application thereof to the Property are hereby declared to be independent of and severable from the remainder of this Option. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Option.

Remainder of this page intentionally left blank. Signatures follow.

Executed by Developer on the date of acknowledgement indicated below, effective as of _____, 202[5] (the "**Effective Date**").

[COVINGTON POINTE JOINT VENTURE],
a Kentucky limited liability company

By: _____

STATE OF _____)
COUNTY OF _____) SS:
)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, as _____ of [COVINGTON POINTE JOINT VENTURE], a Kentucky limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

This instrument prepared by:

Donald L. Warner, III, Esq. (#96556)
Frost Brown Todd LLP
3300 Great American Tower
301 E. Fourth Street
Cincinnati, Ohio 45202

EXHIBIT A

LEGAL DESCRIPTION

[To be attached]

EXHIBIT A-1

Legal Description

Parcel 1: (Former IRS Processing Facility)

Tax Parcel No. 054-12-03-001.00

Group No. 3915

An approximately .88 acre tract of land being a portion of:

THAT LAND LYING IN THE CITY OF COVINGTON, COUNTY OF KENTON, COMMONWEALTH OF KENTUCKY, BEING THE SAME PROPERTY AS RECORDED IN VOLUME 524, PAGE 439, VOLUME 579, PAGE 883, AND VOLUME C398, PAGE 260 IN THE OFFICE OF THE RECORDER, KENTON COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A PK NAIL FOUND (NO ID) LYING AT THE NORTHWEST RIGHT OF WAY INTERSECTION OF EAST 4TH STREET (50' R/W) AND A 30' ALLEY (A/K/A BRENT SPENCE SQUARE), SAID NAIL BEING THE SOUTHEAST CORNER OF THIS TRACT; THENCE WITH THE NORTH LINE OF SAID EAST 4TH STREET AS FOLLOWS: SOUTH $77^{\circ}57'40''$ WEST A DISTANCE OF 659.03 FEET TO A PK NAIL SET; THENCE SOUTH $88^{\circ}51'24''$ WEST A DISTANCE OF 426.70 FEET TO A CONCRETE MONUMENT FOUND; THENCE ALONG A CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 62.28', A RADIUS OF 40.00', WITH A CHORD BEARING OF NORTH $46^{\circ}32'18''$ WEST, A CHORD DISTANCE OF 56.18' TO A PK NAIL SET IN THE EAST RIGHT OF WAY LINE OF JOHNSON STREET (60' R/W); THENCE WITH SAID EAST RIGHT OF WAY LINE NORTH $01^{\circ}49'19''$ WEST A DISTANCE OF 593.51 FEET TO A 1/2" IRON PIN SET; THENCE ALONG A CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 136.64', A RADIUS OF 115.74', WITH A CHORD BEARING OF NORTH $43^{\circ}45'35''$ EAST, A CHORD DISTANCE OF 128.84' TO A PK NAIL SET IN THE SOUTH RIGHT OF WAY LINE OF WEST RIVERCENTER BOULEVARD (60' R/W); THENCE WITH SAID SOUTH RIGHT OF WAY LINE AS FOLLOWS: NORTH $77^{\circ}47'05''$ EAST A DISTANCE OF 350.95 FEET TO A PK NAIL SET; THENCE ALONG A CURVE TURNING TO THE LEFT, HAVING AN ARC LENGTH OF 308.36', A RADIUS OF 664.82', WITH A CHORD BEARING OF NORTH $64^{\circ}29'50''$ EAST, A CHORD DISTANCE OF 305.60' TO A PK NAIL SET; THENCE ALONG A REVERSE CURVE TURNING TO THE RIGHT, HAVING AN ARC LENGTH OF 67.01', A RADIUS OF 32.99', WITH A CHORD BEARING OF SOUTH $71^{\circ}11'05''$ EAST, A CHORD DISTANCE OF 56.07' TO A PK NAIL SET IN SAID SOUTH RIGHT OF WAY LINE, SAID PK NAIL BEING THE NORTHWEST CORNER OF THE COMMONWEALTH OF KY PROPERTY; THENCE WITH THE WEST LINE OF SAID COMMONWEALTH PROPERTY SOUTH $12^{\circ}25'25''$ EAST A DISTANCE OF 141.48 FEET TO A PK NAIL FOUND (NO ID) IN SAID WEST LINE; THENCE ALONG A CURVE TURNING TO THE LEFT, HAVING AN ARC LENGTH OF 73.52', A RADIUS OF 45.00', WITH A CHORD BEARING OF SOUTH $56^{\circ}01'11''$ EAST, A CHORD DISTANCE OF 65.61' TO A POINT IN THE SOUTH LINE OF SAID COMMONWEALTH PROPERTY, SAID POINT MARKED BY A 5/8" IRON PIN FOUND (ID: HARRIS) LYING SOUTH $02^{\circ}26'57''$ WEST A DISTANCE OF 1.40'; THENCE WITH SAID SOUTH LINE NORTH $78^{\circ}03'21''$ EAST A DISTANCE OF 369.74 FEET TO A POINT IN THE WEST RIGHT OF WAY LINE OF MADISON AVENUE (66' R/W), BEING THE SOUTHEAST CORNER OF SAID COMMONWEALTH PROPERTY, SAID POINT BEING MARKED BY A PK NAIL FOUND (NO ID) LYING NORTH $60^{\circ}30'32''$ EAST A DISTANCE OF 0.59'; THENCE WITH SAID WEST RIGHT OF WAY LINE SOUTH $12^{\circ}06'39''$ EAST A DISTANCE OF 417.90 FEET TO A POINT IN THE NORTH

LINE OF A 30' ALLEY (A/K/A BRENT SPENCE SQUARE), SAID POINT MARKED BY A PK NAIL FOUND (NO ID) LYING NORTH 72°45'57" EAST A DISTANCE OF 2.89'; THENCE WITH THE NORTH LINE OF SAID ALLEY SOUTH 77°33'35" WEST A DISTANCE OF 214.94 FEET TO A PK NAIL SET; THENCE WITH THE WEST LINE OF SAID ALLEY SOUTH 12°00'44" EAST A DISTANCE OF 218.25 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 881,320 SQUARE FEET OR 20.232 ACRES, ACCORDING TO A SURVEY BY YOUNG HOBBS & ASSOCIATES, 1202 CROSSLAND AVENUE, CLARKSVILLE, TN.

EXHIBIT E

City Update Form(s)



Economic Development Project – Monthly Progress Report

Covington Department of Economic Development
20 W Pike Street Covington, KY 41011
Phone number: 859-292-2122
Email: twest@covingtonky.gov
Website: www.covingtonky.gov

DATE OF REPORT: _____

PROJECT INFORMATION

Project Name	
Developer	
Project Address	
Contact Name/Phone/Email	

PROJECT DESCRIPTION (100 WORDS MAX)

PROJECT SCHEDULE

Project Start Date (actual)	
Projected Completion Date (estimate)	
Has the projected completion date changed from last month? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Milestone Status		
Design:	<input type="checkbox"/> Started	<input type="checkbox"/> Complete
Site Prep:	<input type="checkbox"/> Started	<input type="checkbox"/> Complete
Foundation:	<input type="checkbox"/> Started	<input type="checkbox"/> Complete
Structural:	<input type="checkbox"/> Started	<input type="checkbox"/> Complete
Envelope:	<input type="checkbox"/> Started	<input type="checkbox"/> Complete
Roof:	<input type="checkbox"/> Started	<input type="checkbox"/> Complete
M/E/P:	<input type="checkbox"/> Started	<input type="checkbox"/> Complete
Interior:	<input type="checkbox"/> Started	<input type="checkbox"/> Complete
Occupancy:	<input type="checkbox"/> Started	<input type="checkbox"/> Complete

The Project Is:

Ahead of Schedule

On Schedule

Behind Schedule (please explain delays):

PROJECT TASKS

Please list work accomplished this month:

Please list work scheduled for next month:

Will any of these tasks require media or public notifications? Yes No

EXHIBIT F

Form Of Completion Guaranty

COMPLETION GUARANTY OF BLOCK A PROJECT

THIS COMPLETION GUARANTY OF BLOCK A PROJECT (the “**Completion Guaranty**”), dated as of _____, and is executed and delivered by COVINGTON POINTE JOINT VENTURE LLC, a Kentucky limited liability company and _____ (together, “**Guarantor**”), to the CITY OF COVINGTON, KENTUCKY a Kentucky City of the Home Rule Class (the “**City**”) for the benefit of the City, securing and guaranteeing the timely the performance of Covington Pointe Joint Venture LLC, a Kentucky limited liability company (the “**Developer**”), under the circumstances summarized in the following recitals and with each capitalized word or term used as a defined term in this Completion Guaranty but not otherwise defined herein having the meaning assigned to it in Disposition And Development Agreement dated as of _____ (the “**DDA**”) between the City and the Guarantor as assigned to Developer.

A. Pursuant to the DDA, the City has agreed to transfer the Block A Project Site to the Developer to facilitate the redevelopment of the Block A Project Site into a mixed-use residential development, which redevelopment will generally entail the design, installation, construction, equipping and financing of ten (10) for-sale single-family detached homes and two (2) commercial buildings situated on the Project Parcels (collectively, the “**Block A Project**”).

B. Pursuant to Section 11.3 of the DDA, prior to the assignment of the obligations under the DDA, the Guarantor is required to guarantee the timely completion of the Block A Project on behalf of the Developer.

C. The Guarantor will realize significant financial benefits from the timely completion of the Block A Project and has agreed to enter into this Completion Guaranty for the benefit of the City.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt of which is acknowledged, the Guarantor does hereby covenant and agree with the City, for the benefit of and enforceable by the City, effective as of the date hereof, as follows:

1. Completion Guaranty. The Guarantor hereby guarantees that (i) the Phase I Block A Project will be completed by no later than the date that is 30 months after the Effective Date (the “**Phase I Completion Deadline**”), and (ii) the Phase II Block A project will be completed by no later than the date that is 72 months after the Effective Date (the “**Phase II Completion Deadline**” each a “**Completion Deadline**” and, together the “**Completion Deadlines**”); provided, however, that either or both of the Completion Deadlines shall be extended if and to the extent that delays in completion of the Block A Project are caused by a Force Majeure Event (as defined below), evidenced to the reasonable satisfaction of the City.

2. Continuous Construction. The Guarantor hereby guarantees that the improvements to be constructed on the Project Parcels will be Continuously Constructed through substantial completion.

Except as limited by Section 5 hereof, the Guarantor agrees that liability under the guaranties made in these Sections 1 and 2 shall be absolute, unconditional and fixed when (i) notice of the assertion or filing of any lien or claim with respect to any funds, or with respect to the Block A Project Site, for labor or materials, or (ii) notice of the non-completion of the Block A Project in accordance with this Section, has been forwarded by the City, by certified or registered mail, to the Guarantor at the address set forth below, absent error (evidenced to the reasonable satisfaction of the City) in such notice. The Guarantor will hold the City harmless from any and all costs, damages, losses or expenses, including reasonable attorneys' fees, arising out of any failure to Continuously Construct and/or complete the Block A Project in accordance with the Completion Requirements, and this covenant shall survive the termination of this Completion Guaranty.

As used in this Section 1 and Section 2:

“Completion Requirements” means: (a) (i) completion of the Block A Project, substantially in accordance with the DDA; and (b) completion of all of the Block A Project in conformity with existing zoning and environmental laws and restrictions of record, and free and clear of any and all liens and claims with respect to public funds, or with respect to the Block A Project Site, for labor performed or material furnished in connection with the construction and completion of the Block A Project.

“Continuous Construction” or “Continuously Construct” with respect to the construction of improvements to be constructed on the Project Parcels, means the construction of such improvements without a Significant Delay.

“Force Majeure Event” means any of the following events: (a) acts of God, including, without limitation, floods, tornadoes and earthquakes; (b) fires or other casualties; (c) governmental moratorium; (d) acts of a public enemy, civil commotions, riots, insurrections, acts of war, blockades, terrorism, effects of nuclear radiation, or national or international calamities; (e) sabotage; (f) condemnation or other exercise of the power of eminent domain; (g) restraint or any similar act by any governmental authority; and (h) the orders of any governmental authority having jurisdiction over the Block A Project.

“Significant Delay” with respect to the construction of the improvements on the Project Parcels, means a delay or interruption in the construction of the improvements that is sixty (60) days or greater that is not caused by the occurrence of Force Majeure Events.

3. Guaranty of Developer's Obligations. Without limitation on the guaranties made in Section 1 and Section 2 hereof, the Guarantor hereby further guarantees the performance of all obligations of the Developer under the DDA and any contract (including any subcontracts and contracts for the supply of materials) entered into, assigned to or assumed by the Developer with respect to the Block A Project. The foregoing guaranty specifically includes all obligations of the Developer under the DDA, and the guaranty of those obligations by the Guarantor under this Section 3 shall survive the termination of this Completion Guaranty and the DDA. The Guarantor agrees that liability under the guaranties made in this Section shall be absolute, unconditional and fixed when notice of any default by the Developer under the DDA (or any contract entered into, assigned

to or assumed by the Developer pursuant to the DDA), has been forwarded by the City, by certified or registered mail, to the Guarantor at the address set forth below, absent error (evidenced to the reasonable satisfaction of the City) in such notice.

4. Binding Effect. This Completion Guaranty is binding upon the Guarantor (subject to the terms and provisions hereof) and inures to the benefit of the City, and the respective heirs, executors, legal representatives, successors, and assigns of Guarantor and City, whether by voluntary action of the parties or by operation of law. Guarantor may not delegate or transfer its obligations under this Completion Guaranty.

5. Statement of Benefit to Guarantor. The Guarantor acknowledges that it will directly benefit from the construction of the Block A Project. Therefore, as otherwise stated in this Guaranty, this Guaranty is being made, in part, in consideration of the construction of the Block A Project and the benefit to the Guarantor's property that such construction is anticipated to effect.

6. Effectiveness. The obligations of the Guarantor hereunder shall be effective without notice or demand by the City, and shall not be terminated, affected or impaired by reason of (a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Developer of its obligations under the DDA, (b) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, liquidation or similar proceedings affecting the Developer or the assets of the Developer (c) any exercise, or any failure, omission, delay or lack of diligence to enforce, assert to exercise, or any waiver, of any right or remedy with respect to the obligations of the Developer under the DDA, or (d) the settlement or compromise of any obligation of the Developer.

This Completion Guaranty shall be effective upon the execution hereof and shall remain in effect until (i) in the case of the guaranty of the Block A Project, completion of the Block A Project, as evidenced by a permanent certificate of occupancy for the improvements comprising the Phase II Block A Project. Upon request by the Guarantor and provision of evidence reasonably satisfactory to the City that the events referenced above have occurred, the City will execute a certificate indicating that this Completion Guaranty is released and (ii) in the case of the Continuous Construction of the improvements to be constructed upon the Project Parcels, the completion of individual improvements whereby either (a) the construction was actually continuous with no Significant Delays, or, if any Significant Delays did occur in the construction of the corresponding improvements, such Significant Delays were consented to by the City in writing.

7. Unconditional Obligation. The obligations of the Guarantor under this Completion Guaranty shall be binding upon the Guarantor and its successors and assigns, shall be absolute and unconditional and shall remain in full force and effect until the satisfaction of its obligations hereunder. The liability of all persons who are obligated under this Guaranty shall be joint and several.

8. Default; Enforcement. In the event a Guarantor does not perform its obligations and duties hereunder as required by the terms and conditions hereof, the City shall be entitled to all remedies at law or in equity including, without limitation, obtaining specific performance from or an injunction, including a mandatory injunction, against Guarantor. The City shall have the right to proceed first and directly the Guarantor under this Completion Guaranty without proceeding against or exhausting any other remedies which it may have and without resorting to any other security held

by the City. The Guarantor agrees further to pay all expenses and charges (including court costs and reasonable attorneys' fees) paid or incurred by the City in enforcing this Completion Guaranty, whether the same shall be enforced by suit or otherwise.

No remedy herein conferred upon or reserved to the City and is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Completion Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In the event any provision contained in this Completion Guaranty should be breached by the Guarantor and thereafter duly waived by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Completion Guaranty shall be established by conduct, custom or course of dealing.

9. Entire Agreement; Modification. This Completion Guaranty is the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes and replaces all prior discussions, representations, communications and agreements (oral or written). This Completion Guaranty may not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing.

10. Binding Effect; Kentucky Law. The Guarantor further agrees that the terms and provisions hereof shall be binding upon its successors and assigns and inure to the benefit of the City. This Completion Guaranty is an agreement made in and under the laws of the Commonwealth of Kentucky (the "Commonwealth") and, for all purposes, shall be governed by and construed in accordance with the laws of the Commonwealth.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Guarantor has executed this Completion Guaranty and this Completion Guaranty is effective as of the date first above written.

GUARANTOR

DEVELOPER:

COVINGTON POINTE JOINT VENTURE LLC,
a Kentucky limited liability company

By: _____

Name: _____

Title: _____

[NAME/ENTITY INFORMATION]

By: _____

Name: _____

Title: _____