

ASSIGNMENT AND ASSUMPTION OF AGREEMENT IN LIEU OF TAXES

This Assignment and Assumption of Agreement in Lieu of Taxes (this “Assignment”) dated the ____ day of _____, 2024 (the “Effective Date”), is made by and between Covington FC III, LLC, an Indiana limited liability company (as successor in interest to F&C Development, Inc.) (the “Assignor”) and BVCSF Riverhaus, LLC, a Delaware limited liability company, authorized to do business in the Commonwealth of Kentucky (the “Assignee”; Assignor and Assignee, collectively, the “Parties”);

WITNESSETH:

WHEREAS, the City of Covington, Kentucky (the “City”), the County of Kenton, Kentucky (the “County”), the Covington Independent School District (the “School District”) and F&C Development, Inc., entered into an Agreement in Lieu of Taxes effective November 22, 2016 (“PILOT Agreement”), which Pilot Agreement has been assigned to the Assignor, and which PILOT Agreement, provides for payments in lieu of taxes to the applicable taxing jurisdiction in the applicable amounts as set forth therein and otherwise generally related to the redevelopment of the real property and improvements located in the City of Covington, Kentucky, commonly referred to as Riverhaus (the “Project”); and

WHEREAS, pursuant to Section 7 of the PILOT Agreement, the Assignor may assign its respective rights, title, interest, duties, liabilities and obligations under and relating to the PILOT Agreement to a third party purchaser of the Project, with prior written consent of the City, the County and the School District, which shall be appended to the PILOT Agreement as an amendment thereto; and

WHEREAS, the Assignor plans to sell and assign its right title and interest in the Project, including its rights and obligation under the Pilot Agreement, to the Assignee.

NOW, Therefore, the Parties Agree as Follows:

1. Assignment. The Assignor hereby transfers and assigns all of its rights, title, interests, duties, liabilities and obligations under or relating to the PILOT Agreement to the Assignee as of the date hereof, and the Assignee hereby accepts and assumes Assignor’s rights, title, interests, duties, liabilities and obligations under or relating to the PILOT Agreement as of the date hereof.

2. Assumption. Assignor represents that Assignor has full power and authority to assign the PILOT Agreement, with consent of the City, the County and the School District, that this Assignment has been validly executed by Assignor, and that this Assignment is the legal, valid and binding obligation of Assignor, enforceable against Assignor in accordance with the respective terms hereof. Assignee represents that Assignee has full power and authority to assume the PILOT Agreement as aforesaid, that this Assignment has been validly executed by Assignee, and that this Assignment is the legal, valid and binding obligation of Assignee, enforceable against Assignee in accordance with the respective terms hereof.

3. Indemnity. Assignor covenants and agrees to protect, defend, indemnify, and hold harmless Assignee and its officers, directors, members, partners, shareholders, employees and agents from and against any and all liabilities, damages, losses, expenses (including, without limitation, attorneys' fees), costs, suits, judgments, claims and demands whatsoever, at law or in equity, incurred or suffered by Assignee, arising from or related to any default, obligation, covenant or liability by Assignor under the PILOT Agreement occurring before the date of this Assignment. Assignee covenants and agrees to protect, defend, indemnify, and hold harmless Assignor and its officers, directors, members, partners, shareholders, employees and agents from and against any and all liabilities, damages, losses, expenses (including, without limitation, attorneys' fees), costs, suits, judgments, claims and demands whatsoever, at law or in equity, incurred or suffered by Assignor, arising from or related to any default, obligation, covenant or liability by Assignee under the PILOT agreement occurring from and after the date of this Assignment.

4. Assignor Representations. In accordance with Section 7 of the PILOT Agreement Assignor warrants to Assignee that Assignor is current on all payments owed to the School District, the County and the City under the PILOT Agreement and Assignor shall fully pay any arrearages remaining on the PILOTs owed to the School District, the County and/or the City. Assignor further hereby represents and warrants to Assignee that there is no default continuing past the applicable cure period under or in the PILOT Agreement and all amounts due and owing thereunder have been paid to the applicable party.

5. Miscellaneous. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any capitalized term herein not defined shall have the meaning given it under the PILOT Agreement. No provision of this Assignment shall be modified, waived or terminated, except by an instrument in writing signed by the party against whom enforcement of such modification, waiver or termination is sought. If there is any inconsistency between this Assignment and the PILOT Agreement, the terms and conditions of this Assignment shall control. This Assignment shall be construed in accordance with and governed by the laws of the Commonwealth of Kentucky. This Assignment may be executed in any number of identical counterparts, any or all of which may contain the signatures of fewer than all of the parties but all of which shall be taken together as a single instrument.

(End of Document - Signature Pages Follow)

IN WITNESS WHEREOF the Parties have hereunto set their hand.

ASSIGNOR:

Covington FC III, LLC, an Indiana limited liability company

By: _____

[Signature Page to Assignment and Assumption of Agreement in Lieu of Taxes]

ASSIGNEE:

BVCSF Riverhaus, LLC, a Delaware limited liability company

By: _____

[Signature Page to Assignment and Assumption of Agreement in Lieu of Taxes]

CONSENT OF THE CITY TO ASSIGNMENT
OF AGREEMENT IN LIEU OF TAXES

CITY OF COVINGTON, KENTUCKY

By: _____
Joseph U. Meyer, Mayor

CONSENT OF THE COUNTY TO ASSIGNMENT
OF AGREEMENT IN LIEU OF TAXES

COUNTY OF KENTON, KENTUCKY

By: _____
Kris Knochelmann, County Judge/Executive

CONSENT OF THE SCHOOL DISTRICT
TO ASSIGNMENT OF
AGREEMENT IN LIEU OF TAXES

COVINGTON INDEPENDENT SCHOOL DISTRICT

By: _____
Superintendent

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