

## ESTOPPEL CERTIFICATE AND AGREEMENT

THIS ESTOPPEL CERTIFICATE AND AGREEMENT, is dated as of \_\_\_\_\_, 2021 (the "Effective Date"), by and among THE CITY OF COVINGTON, a city and political subdivision of the Commonwealth of Kentucky (the "Lessor"), COVINGTON FC II, LLC, an Indiana limited liability company ("FC II"), COVINGTON FC III, LLC, an Indiana limited liability company ("FC III"), and NATIXIS, NEW YORK BRANCH, a branch of Natixis S.A., a public limited company organized and existing under the laws of France (together with its successors and assigns including any subsequent holders of the Loan, the "Lender") and NATIXIS, NEW YORK BRANCH, a branch of Natixis S.A., a public limited company organized and existing under the laws of France (together with its successors and assigns including any subsequent holders of the Mezzanine Loan, the "Mezzanine Lender").

- A. The Lessor, FC II and FC III, LLC (FC II and FC III may be individually and collectively referred to as, the "Lessee"), have entered into that certain Agreement of Lease dated as of September 1, 2017 (the "Lease"), concerning the lease of certain property legally described on Exhibit A attached hereto, and hereby made a part hereof (the "Leased Premises"), and the improvements to be located thereon (the "Improvements").
- B. The Lender intends to provide to Lessee a mortgage loan (the "Loan") pursuant to the terms and subject to the conditions of that certain Loan Agreement dated as of \_\_\_\_\_, 2021 (the "Loan Agreement"), by and between FC II, FC III and the Lender. The Loan is secured, among other things, by the leasehold estate in the Leased Premises (the "Leasehold Estate") and by that certain Subordinated Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of \_\_\_\_\_, 2021 (the "Mortgage"), and that certain separate Assignment of Leases and Rents dated as of \_\_\_\_\_, 2021 (the "Assignment of Leases and Rents"), each executed by the Lessee in favor of the Lender and encumbering the Lessee's interest in the Leased Premises and the Improvements. As a condition to extending the Loan, the Lender has required, and the Lessor has agreed, to execute and deliver the Mortgage pursuant to which the Lessor has agreed to subject its fee simple interest in and to the Leased Premises to the lien of the Mortgage.
- C. The Mezzanine Lender intends to provide to Covington FC Mezz I, LLC, a Delaware limited liability company ("Mezz I"), and Covington FC Mezz II, LLC, a Delaware limited liability company ("Mezz II"), a mezzanine loan (the "Mezzanine Loan") pursuant to the terms and subject to the conditions of that certain Mezzanine Loan Agreement dated as of \_\_\_\_\_, 2021 (the "Mezzanine Loan Agreement"), by and between [ ], [ ] and the Mezzanine Lender. The Mezzanine Loan is secured, among other things, by those certain Pledge and Security Agreements dated as of \_\_\_\_\_, 2021 between Mezz I and the Mezzanine Lender and Mezz II and the Mezzanine Lender, respectively.
- D. The Lender and the Mezzanine Lender has also required, as a condition to extending the Loan, that the Lessor execute and deliver this Estoppel Certificate and Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Lessor Consent. Lessor hereby acknowledges and consents to Lessee's execution, delivery and recording of the Mortgage, the Assignment of Leases and Rents, and other instruments evidencing and/or securing the Loan, and agrees that neither the making of the Loan, the execution, delivery and recording of the Mortgage and the Assignment of Leases and Rents, nor the exercise of any rights or

remedies thereunder, including the sale or assignment of the Leased Premises or the improvements thereon (the “Improvements”) through foreclosure or deed in lieu of foreclosure, will cause a default under the Lease, or cause Lender to become the assignee of Lessee's interest under the Lease unless and until Lender, in the exercise of its sole discretion, becomes a tenant under the Lease or forecloses on the Leased Premises and the Improvements. For purposes of the Lease, the Mortgage shall be considered a “Leasehold Mortgage” as such term is defined and used in the Lease.

2. Representations of Lessor and Lessee. Lessor and Lessee hereby represent and warrant, to the best of their knowledge, and covenant and agree as follows:

(a) Status of Lease. As of the Effective Date, the Lease is in full force and effect and has not been modified, amended, supplemented or terminated, except as provided herein. The term of the Lease commenced on September 11, 2017 and shall expire on August 31, 2047. There do not exist any other agreements concerning the Leased Premises, whether oral or written between Lessor and Lessee under the Lease.

(b) Payment of Rent. All rents and other sums and charges which are currently due and payable by Lessee under the Lease through the Effective Date have been paid in full. Pursuant to the Lease and that certain Amended and Restated Home Office Payment Agreement dated as of \_\_\_\_\_, 2021 by and among Lessor, FC II, FC III and The Huntington National Bank, the monthly base rent payable by Lessee under the Lease is the debt service payment of Lessee as borrower to Lender pursuant to the Loan Agreement attributable to the Outstanding Bond Amount (as such term is defined in the Mortgage), which amount shall be deemed to be the rental payment under the Lease to pay debt service on the Bonds (as such term is defined in the Mortgage).

(c) No Default by Lessee. Through the Effective Date, there is no default on the part of Lessee under the Lease, and no event has occurred or condition exists which, with the passage of time or giving of notice, or both, would constitute a default on the part of Lessee under the Lease. Each of the obligations on Lessee’s part to be performed to date under the Lease have been performed through the Effective Date.

(d) No Default by Lessor. Through the Effective Date, there is no default on the part of Lessor under the Lease, and no event has occurred or condition exists which, with the passage of time or giving of notice, or both, would constitute a default on the part of Lessor under the Lease. Each of the obligations on Lessor’s part to be performed to date under the Lease have been performed through the Effective Date.

(e) Consent to Mortgage and Assignment of Leases and Rents. Notwithstanding anything to the contrary in the Lease, and with the understanding the Lessor is not representing the enforceability, validity or priority of the Mortgage and Assignment of Leases and Rents and had no role in drafting of the Mortgage and Assignment of Leases and Rents, the Lessor hereby agrees that the Mortgage and the Assignment of Leases and Rents are permitted encumbrances under the Lease, and the Lessee's execution, delivery and recording of the Mortgage and the Assignment of Leases and Rents will not constitute a default under the Lease.

(f) Compliance with Restrictions. Through the Effective Date, any restrictions as to the use of the Leased Premises and the Improvements as set forth in the Lease are being fully complied with by Lessee and all improvements required to be constructed under the provisions of the Lease have been completed in accordance with the provisions of the Lease. The Development and Disposition Agreement that is attached as an exhibit to the Lease is no longer in effect other than those provisions which by their express terms survive.

(g) Ongoing Operations. As long as the Mortgage and the Assignment of Leases and Rents encumber Lessee's leasehold interest in the Leased Premises:

(i) neither Lessor nor Lessee shall enter into, agree or consent to, or acknowledge or approve, any amendment to or modification of the Lease without the prior written consent of Lender, which approval shall not be unreasonably withheld, conditioned or delayed;

(ii) the Lease shall not be terminated or cancelled and no voluntary agreement by either Lessor or Lessee for the cancellation, surrender, termination, or any exercise of any options or elections of the Lease shall be effective without the prior written consent of Lender, which approval shall not be unreasonably withheld, conditioned or delayed;

(iii) Lessor shall not accept the exercise by the holder of the leasehold interest under the Lease of any right or option contained in the Lease to cancel, terminate or sublease the Lease without the prior written consent of Lender; and

(iv) Except for the Mortgage, Lessor shall not subordinate its interest in the Lease or subject its interest in the Leased Premises to any other mortgage or other lien on Lessor's interest in the Leased Premises or the Lease. Lessor confirms that the mortgage shall not be subject or subordinate to any mortgage encumbering the fee estate of the Leased Premises.

3. Lessee Default. Lessor hereby acknowledges and agrees that Lessor will simultaneously mail or deliver to Lender and Mezzanine Lender a duplicate copy of all notices in writing which Lessor may, from time to time, give to or serve on Lessee under and pursuant to the terms and provisions of the Lease and that no notice of default is given to Lessee, and no exercise of any remedy by Lessor as a result of such default, shall be effective unless such notice have been delivered to Lender and Mezzanine Lender. Furthermore, in the event of default by Lessee under the terms of the Lease, Lessor shall give Lender and Mezzanine Lender notice of the default and the right to cure such default pursuant to the terms of the Lease and, during the cure period, Lessor will take no action to enforce its claim, if any, arising from such default without the consent of Lender. Lender and Mezzanine Lender shall have sixty (60) days in addition to the time allowed Lessee to cure any monetary or non-monetary default; provided, however, in the event that any default cannot, with reasonable diligence, be cured within sixty (60) days, Lender and Mezzanine Lender shall be afforded such longer period as may be required to complete such cure, including, without limitation, such time as may be required for Lender and Mezzanine Lender to gain possession of Lessee's interest under the Lease, provided, that Lender or Mezzanine Lender notifies Lessor of its intention to cure such default and Lender or Mezzanine Lender promptly commences and diligently pursues such cure to completion.

4. New Lease. In the event the Lease is terminated for any reason including, but not limited to, a default under the Lease which is not curable or the bankruptcy or insolvency of Lessee, Lender shall have the right, following the termination of the Lease or rejection thereof by a bankruptcy trustee or similar party, to enter into a new lease with Lessor on substantially the same terms as the original Lease and Lessor agrees to enter into such new lease with Lender.

5. Insurance. Lender shall be a named insured under Lessee's hazard insurance policies applicable to the Improvements, which shall provide for payment of proceeds of such policies to Lender in the event of a casualty. Until the payment in full of the Loan following an event of casualty or condemnation, neither Lessee nor Lessor shall have the option to terminate or modify the Lease without the prior written consent of Lender, which shall not be unreasonably withheld. Lender shall be entitled to

participate in any settlement regarding insurance or condemnation proceeds or awards, to collect and hold any such proceeds or awards and to determine and direct whether any such proceeds or awards are made available for the restoration of the Leased Premises or are applied to the repayment of the Loan.

6. Assignment. Lessor acknowledges that, if Lender or any other party succeeds to the interest of Lessee under the Lease as a result of foreclosure proceedings, the granting of a deed in lieu of foreclosure, or through any other means, Lender or any such other party (the "Successor Lessee"), and any transferee of Lender or such other party, shall become a substituted tenant under the Lease without necessity of any consent of, approval by or notification to Lessor. Without further consent of Lessor, the Successor Lessee shall have the right to sell and assign the Leasehold Estate or portion thereof, without necessity of any consent, approval by or notification to Lessor. Upon and after such acquisition, the Lease shall continue in full force and effect as if no default by the Lessee under the Lease had occurred.

7. Lender's Possession of Leased Premises. In the event Lender enforces the Mortgage and acquires possession of the Leased Premises or the Improvements in any lawful manner, Lessor agrees (i) to recognize Lender and any successor in interest as the successor ground lessee under the Lease; (ii) to recognize that title to all Improvements shall automatically vest in Lender as the successor under the Lease; and (iii) Lender shall only be liable for Lessee's obligations under the Lease accruing while the Lender is in actual possession of the Improvements.

8. Options. Lender shall have the right to exercise any option of Lessee under the Lease including, but not limited to, any option to renew the term of the Lease or any option to purchase the Leased Premises.

9. Notices. All notices, consents, requests, demands and other communications hereunder shall be given to or made upon the respective parties hereto at their respective addresses specified below or, as to any party, at such other address as may be designated by it in a written notice to the other party. All notices, requests, consents and demands hereunder shall be effective when personally delivered or deposited in the United States Mail, certified or registered, postage prepaid, addressed as aforesaid:

Lessor: City of Covington  
20 W. Pike Street  
Covington, Kentucky 41011  
Attn: City Manager

Lessee: Covington FC II, LLC and Covington FC III, LLC  
One Indiana Square, Suite 3000  
Indianapolis, Indiana 46204  
Attn: Deron Kintner

Lender: Natixis, New York Branch  
1251 Avenue of the Americas  
New York, New York 10020  
Attn: Real Estate Administration

Mezzanine  
Lender: Natixis, New York Branch  
1251 Avenue of the Americas  
New York, New York 10020  
Attn: Real Estate Administration

10. **No Merger.** There shall be no merger of the Lease or the Leasehold Estate in the fee estate in the Leased Premises by reason of the fact that the Lease or the Leasehold Estate thereunder may be held, directly or indirectly, by or for the account of any entities who hold the fee estate. No such merger shall occur unless all entities having an interest in the fee estate and all entities (including Lender) having an interests in the Lease or the Leasehold Estate thereunder join in a written statement affecting such merger and duly record the same.

11. **Foreclosure of Mezzanine Loan.** Mezz I has pledged, and granted a first priority lien on, 100% of the membership interests in FC II to, and in favor of, Mezzanine Lender in connection with the Mezzanine Loan and Mezz II has pledged, and granted a first priority lien on, 100% of the membership interests in FC III to, and in favor of, Mezzanine Lender in connection with the Mezzanine Loan. Mezzanine Lender shall have the right to foreclose upon or accept an assignment in lieu of foreclosure of 100% of the membership interests in FC II and/or FC III, or exercise other remedies available to Mezzanine Lender in the name of a designee or nominee without any requirement for consent, or approval of Lessor. In the event of a foreclosure or assignment in lieu of foreclosure, or other action whereby Mezzanine Lender or its designee or nominee becomes the holder of 100% of the membership interests in FC II and/or FC III (Mezzanine Lender or such designee or nominee, a "**Foreclosure Mezzanine Successor**"), the subsequent assignment of such Foreclosure Mezzanine Successor's interests in Lessee shall not require consent of Lessor.

12. **Pilot Agreement.** Notwithstanding anything contained in that certain Agreement In Lieu of Taxes (the "**PILOT Agreement**") effective as of November 22, 2016, by and among Lessor, the County of Kenton, Kentucky (the "**County**"), the Covington Independent School District (the "**School District**"), and F&C Development, Inc. (as predecessor in interest to Lessee), including but not limited to Section 7 thereof, an assignment of the Lessee's interest in the Lease to a Successor Lessee under Section 6 hereof and/or the foreclosure or acceptance of an assignment in lieu of foreclosure of the membership interests in FC II or FC III by a Foreclosure Mezzanine Successor under Section 12 hereof or the subsequent assignment of such interest in the Lease or such membership interests by Successor Lessee or Foreclosure Mezzanine Successor, as applicable, shall not require the consent of any of Lessor, the County or the School District and the PILOT Agreement shall continue in full force and effect for the remainder of the term thereof subject to the terms thereof and such Successor Lessee shall succeed to the rights and obligations (including any obligations relating to unpaid PILOT Payments) of the Developer thereunder. In addition, the PILOT Agreement shall not terminate in the event the Lease is terminated and a new Lease is entered into in accordance with Section 4 hereof. Each of Lessor, the County and the School District hereby acknowledge and agree that Lessor, the County and the School District will simultaneously mail or deliver to Lender and Mezzanine Lender a duplicate copy of all notices of default which Lessor, the County or the School District may, from time to time, give to or serve on Lessee under and pursuant to the terms and provisions of the PILOT Agreement and that no notice of default is given to Lessee, and no exercise of any remedy by Lessor as a result of such default, shall be effective unless such notice have been delivered to Lender and Mezzanine Lender. Furthermore, in the event of default by Lessee under the terms of the PILOT Agreement, Lessor, the County and the School District shall give Lender and Mezzanine Lender notice of the default and the right to cure such default pursuant to the terms of the PILOT Agreement and, during the cure period, Lessor will take no action to enforce its claim, if any, arising from such default without the consent of Lender. Lender and Mezzanine Lender shall have thirty (30) days in addition to the time allowed Lessee to cure any monetary default and sixty (60) days in addition to the time allowed Lessee to cure any monetary or non-monetary default; provided, however, in the event that any non-monetary default cannot, with reasonable diligence, be cured within sixty (60) days, Lender and Mezzanine Lender shall be afforded such longer period as may be required to complete such cure, including, without limitation, such time as may be required for Lender and Mezzanine Lender to gain possession of Lessee's interest under the Lease, provided, that Lender or Mezzanine Lender notifies Lessor of its intention to cure such default and Lender or Mezzanine Lender promptly commences and diligently pursues such cure to completion. Through the

Effective Date, Lessor, the County and the School District hereby confirm that the PILOT Agreement has not been amended and that [FC III] is the successor to the "Developer" under the PILOT Agreement and entitled to all of the benefits and subject to the obligations thereunder including the abatement of the real estate taxes described therein.

13. Miscellaneous. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns including the Lender and the Mezzanine Lender, and their participants, and their respective successors and assigns, and all parties claiming by and through or under them, including any successor holder of the Loan now or hereafter held by Lender encumbering the Leasehold Estate and any successor holder of the Mezzanine Loan, and a copy of this Estoppel Certificate and Agreement may be delivered to any such party. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Lessor has executed and delivered this Estoppel Certificate and Agreement as of the day and year first above written.

LESSOR:

CITY OF COVINGTON, KENTUCKY

By: \_\_\_\_\_  
Name: Joseph U. Meyer  
Title: Mayor

ATTEST:

By: \_\_\_\_\_  
Name: Susan Ellis  
Its: City Clerk

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LESSEE:

COVINGTON FC II, LLC

By: \_\_\_\_\_

Name: David Flaherty

Title: Manager

COVINGTON FC III, LLC

By: \_\_\_\_\_

Name: David Flaherty

Title: Manager

[SIGNATURES CONTINUE ON FOLLOWING PAGE]



**LENDER:**

**NATIXIS, NEW YORK BRANCH, a direct branch of  
Natixis S.A., a société anonyme à conseil  
d'administration (public limited company) organized  
and existing under the laws of France,**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**MEZZANINE LENDER:**

**NATIXIS, NEW YORK BRANCH, a direct branch of  
Natixis S.A., a société anonyme à conseil  
d'administration (public limited company) organized  
and existing under the laws of France,**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**

**Solely for purposed of Section 13 of this Estoppel  
Certificate and Agreement:**

COVINGTON INDEPENDENT SCHOOL DISTRICT

By: \_\_\_\_\_

Name: Alvin Garrison

Title: Superintendent

COUNTY OF KENTON, KENTUCKY

By:  \_\_\_\_\_

Name: Joseph Shriver

Title: Deputy County Judge/Executive

10995481.1