

FIRST AMENDMENT AND ASSIGNMENT AND ASSUMPTION OF AGREEMENT IN LIEU OF TAXES

This First Amendment Assignment and Assumption of Agreement in Lieu of Taxes (this “Amendment”) dated the ___ day of August, 2022, by and among KY Covington JRG, LLC a Delaware limited liability company (“JRG”), KY Covington Historic, LLC, a Delaware limited liability company (“Covington Historic”), VP JRGLOFTS KY Owner, LLC, a Delaware limited liability company (“VP JRGLOFTS”), the City of Covington, Kentucky (the “City”), the Covington Independent School District (the “School District”), and the County of Kenton, Kentucky (the “County” and collectively, the “Parties”);

WITNESSETH:

WHEREAS, the City, the School District, the County, and KY Covington West 7th, LLC (“KY Covington”), entered into an Agreement in Lieu of Taxes effective as of February 18, 2018 (the “Original PILOT Agreement” and, together with this Amendment, the “PILOT Agreement”) which, in part, provided for payments in lieu of taxes; and

WHEREAS, in accordance with the terms of the Original Pilot Agreement the rights, title interests and obligations of the Original Pilot Agreement were assigned to JRG by virtue of that certain [Assignment and Assumption of Agreement in Lieu of Taxes made by and between KY Covington and JRG]; and

WHEREAS, the Original PILOT Agreement related to the issuance and sale of the City’s \$29,912,000 Maximum Aggregate Principal Amount Taxable Industrial Revenue Bonds, Series 2019 (John R. Green Lofts Project)(the “Bonds”), with the Bonds being purchased by JRG; and

WHEREAS, the Bonds were issued to assist in the financing, acquisition and construction of the John R. Green Lofts Project, which involved the construction of structured parking and new multi-family residential units (the “New Construction Project”) and the renovation and adaptive reuse of the former John R. Green store (the “Historic Project” and together with the New Construction Project and the Historic Project being collectively referred to as the “Project”); and

WHEREAS, the Bonds and Project are subject to an Agreement of Lease (the “Original Lease”) entered into by and between the City and JRG, dated August 1, 2019, and recorded in ORC 6732, Page 75 of the records of the Kenton County Clerk at Covington, Kentucky; and

WHEREAS, by virtue of that certain Partial Assignment and Assumption of Lease and Landlord Consent dated January 5, 2022, JRG has partially assigned its leasehold interest under the Original Lease as it relates to the Historic Project and the Historic Project Parcel (defined herein) to Covington Historic, and will also partially assign its interest in the Bonds to Covington Historic,

WHEREAS, by virtue of that certain Partial Assignment and Assumption of Agreement in Lieu of Taxes dated January 5, 2022, (the “PILOT Initial Assignment”) JRG has partially assigned its interest under the Original PILOT Agreement as it relates to the Historic Project and

the Historic Project Parcel (defined herein) to Covington Historic, and wishes to terminate the PILOT Initial Assignment so that this Assignment may set forth the parties understanding of rights and obligations of VP JRGLOFTS and Covington Historic in respect of the Original PILOT from the date hereof;

WHEREAS, JRG plans to sell and assign its remaining interest in the Bonds and the leasehold interest under the Original Lease to VP JRGLOFTS, including its leasehold ownership relating to the New Construction Project and the New Construction Project Parcel (defined herein); and

WHEREAS, VP JRGLOFTS and the City plan to enter into a new Agreement of Lease (the "Lease"), dated of even date herewith, and to be recorded in the Official Records of the Kenton County Clerk at Covington, Kentucky relating to the leasehold ownership of the New Construction Project and the New Construction Project Parcel; and

WHEREAS, to facilitate the sale and transfer of the applicable portions of the Bonds and the leasehold interests pertaining to the New Construction Project, the New Construction Project Parcel, the Historic Project, and the Historic Project Parcel, JRG has requested that each of the City, the School District, and the County enter into this Amendment to amend the Original PILOT Agreement to provide for (i) the bifurcation of the Project into the Historic Project and the New Construction Project, (ii) the allocation of PILOT Payments due under the Original PILOT Agreement between the Historic Project Parcel and the New Construction Project Parcel, and (iii) the assignment of the rights, title and interest under the PILOT Agreement to Covington Historic and VP JRGLOFTS.

NOW, therefore, the Parties agree as follows:

1. **Developer**. The term "Developer" under the Original PILOT Agreement is hereby amended to include each of VP JRGLOFTS and Covington Historic.
2. **Description of Project Parcels**. Exhibit A to the Original PILOT Agreement is hereby deleted and replaced with (i) attached Exhibit A (the "Historic Project Parcel") and (ii) attached Exhibit B (the "New Construction Project Parcel").
3. **PILOT Schedules**. Exhibit B to the Original PILOT Agreement is hereby deleted and replaced with (i) attached Exhibit C (the "Historic Project Parcel PILOT Schedule") and (ii) attached Exhibit D (the "New Construction Project Parcel PILOT Schedule"). Commencing on the Effective Date, (i) the payment obligations set forth under the Historic Project Parcel PILOT Schedule (the "Historic Project Parcel PILOT Obligations") shall accrue to the owner of the leasehold interest in the Historic Project Parcel (initially, Covington Historic) such Historic Project Parcel PILOT Obligations representing five percent (5%) of the total annual PILOT Obligations (defined herein) due and owing under the Original PILOT Agreement, and (ii) the payment obligations set forth under the New Construction Project Parcel PILOT Schedule (the "New Construction Project Parcel PILOT Obligations" and, together with the Historic Project Parcel Obligations, the "PILOT Obligations") shall accrue to the owner of the leasehold interest in the New Construction Project

Parcel (initially, VP JRGLOFTS) such obligations representing ninety-five percent (95%) of the total annual PILOT Obligations due and owing under the Original PILOT Agreement.

4. **No Cross-Default.** Section 8 of the Original PILOT Agreement is hereby amended to add the following paragraph:

“Notwithstanding anything to the contrary contained herein, a default, by Covington Historic (or any subsequent owner of the leasehold interest in the Historic Project Parcel) of the Historic Project Parcel PILOT Obligations, including a payment default, shall not constitute an event of default under this PILOT Agreement by VP JRGLOFTS; nor shall a default in the payment by VP JRGLOFTS (or any subsequent owner of the leasehold interest in the New Construction Project Parcel) of the New Construction Project Parcel PILOT Obligations constitute a default under this PILOT Agreement by Covington Historic. For avoidance of doubt, it is hereby acknowledged and agreed that the respective PILOT Obligations of Covington Historic and VP JRGLOFTS, including the payment obligations, are separate obligations and the default by one of the parties hereto, including the failure by one of the parties to make timely payments in accordance with this PILOT Agreement shall not create a default by the other party under this PILOT Agreement, or impact the other non-defaulting party’s rights and benefits conferred pursuant to the Bonds and the Lease and/or the Original Lease.”

5. **Assignment of Historic Project Parcel Interests.** City, School District, County and Covington Historic hereby agree that the Original PILOT Assignment is hereby terminated in all respects. JRG hereby transfers and assigns to Covington Historic all of its rights, title, interests, and obligations in and to this PILOT Agreement as they pertain to the Historic Project, the Historic Project Parcel, and the Historic Project Parcel PILOT Obligations, and Covington Historic hereby accepts and assumes all rights, title, interests, and obligations in and to this PILOT Agreement pertaining to the Historic Project, the Historic Project Parcel, and the Historic Project Parcel PILOT Obligations and further covenants and agrees to make annual payments in lieu of taxes to the City, County and School District in the corresponding amounts set forth on the Historic Project Parcel PILOT Schedule.
6. **Assignment of New Construction Project Parcel Interests.** JRG hereby transfers and assigns to VP JRGLOFTS all of its rights, title, interests, and obligations in and to this PILOT Agreement as they pertain to the New Construction Project, the New Construction Project Parcel, and the New Construction Project Parcel PILOT Obligations, and VP JRGLOFTS hereby accepts and assumes all rights, title, interests, and obligations in and to this PILOT Agreement pertaining to the New Construction Project, the New Construction Project Parcel, and the New Construction Project Parcel PILOT Obligations and further covenants and agrees to make annual payments in lieu of taxes to the City, County and School District in the

corresponding amounts set forth on the New Construction Project Parcel PILOT Schedule.

7. **Representation and Warranties of Assignor.** JRG, the City, the District and the County each hereby represents and warrants to the other Parties that (i) there is no default under or in the PILOT Agreement and all amounts due and owing thereunder have been paid to the applicable Party; (ii) the PILOT Agreement remains in full force and effect, except as amended hereby; and (iii) it is duly authorized and empowered to execute and deliver this Amendment.
8. **Remainder Unaffected.** The remaining provisions of the Original PILOT Agreement are not amended or modified by this Amendment and shall remain in full force and effect.
9. **Indemnification.**
 - a. Covington Historic (or any subsequent owner of the leasehold interest in the Historic Project Parcel), hereby indemnifies and holds harmless VP JRGLOFTS (or any subsequent owner of the leasehold interest in the New Construction Project Parcel, including a party that acquires the property by foreclosure or instrument in lieu of foreclosure), from and against all loss, cost, expense, obligation or liability that Covington Historic (or any subsequent owner of the leasehold interest in the Historic Project Parcel), causes in connection with the New Construction Project PILOT Obligations.
 - b. VP JRGLOFTS, hereby indemnifies and holds harmless Covington Historic (or any subsequent owner of the leasehold interest in the Historic Project Parcel), from and against all loss, cost, expense, obligation or liability that VP JRGLOFTS, causes in connection with the Historic Project PILOT Obligations.
10. **Estoppel.** Any party to the PILOT Agreement may request from the other party, as applicable, and the applicable party shall promptly deliver a written estoppel certificate, within ten (10) business days, confirming the PILOT Agreement is in full force and effect and that no party is in default thereunder, or stating any default, if applicable.
11. **Termination; Amendment.** Any amendment or termination of the Historic Project PILOT Obligations (i) shall not impose any new obligations on VP JRGLOFTS (or any subsequent owner of the leasehold interest in the New Construction Project Parcel), (ii) shall not be binding with respect to VP JRGLOFTS (or any subsequent owner of the leasehold interest in the New Construction Project Parcel), and (iii) shall have no effect on the New Construction Project PILOT Obligations. Any amendment or termination of the New Construction Project PILOT Obligations (i) shall not impose any new obligations on Covington Historic (or any subsequent owner of the leasehold interest in the Historic Project Parcel), (ii) shall not be

binding with respect to Covington Historic (or any subsequent owner of the leasehold interest in the Historic Project Parcel), and (iii) shall have no effect on the Historic Project PILOT Obligations.

12. **Successors and Assigns.** All of the terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Parties have hereunto set their hand.

[Signature page to follow.]

company,

JRG:

KY Covington JRG, LLC,
a Delaware limited liability company

By: KY Covington West 7th LLC,
a South Carolina limited liability
Its Manager

By: _____
Philip J. Wilson
Manager

COVINGTON HISTORIC:

KY Covington Historic, LLC,
a Delaware limited liability company

By: _____

VP JRGLOFTS:

VP JRGLOFTS KY OWNER, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

AGREEMENT AND CONSENT TO ASSIGNMENT:

The City of Covington, Kentucky, the County of Kenton, Kentucky, and the Covington Independent School District hereby agree and consent to this Amendment and Assignment of the Pilot Agreement.

City of Covington, Kentucky

Joseph U. Meyer, Mayor

County of Kenton, Kentucky

By: _____

Covington Independent School District

By: _____

EXHIBIT A

Historic Project Parcel

EXHIBIT B

New Construction Project Parcel

EXHIBIT C

Historic Project Parcel PILOT Schedule

YEAR	SCHOOL PILOT 5%	CITY PILOT 5%	COUNTY PILOT 5%	PILOT PAYMENT TOTAL
Year 1	\$ 3,077	\$ 876	\$ 414	\$ 4,368
Year 2	\$ 3,077	\$ 876	\$ 414	\$ 4,368
Year 3 (2022)	\$ 3,077	\$ 876	\$ 414	\$ 4,368
Year 4 (2023)	\$ 3,077	\$ 876	\$ 414	\$ 4,368
Year 5 (2024)	\$ 3,077	\$ 876	\$ 414	\$ 4,368
Year 6 (2025)	\$ 3,231	\$ 920	\$ 435	\$ 4,586
Year 7 (2026)	\$ 3,231	\$ 920	\$ 435	\$ 4,586
Year 8 (2027)	\$ 3,231	\$ 920	\$ 435	\$ 4,586
Year 9 (2028)	\$ 3,231	\$ 920	\$ 435	\$ 4,586
Year 10 (2029)	\$ 3,231	\$ 920	\$ 435	\$ 4,586
Year 11 (2030)	\$ 3,393	\$ 966	\$ 457	\$ 4,816
Year 12 (2031)	\$ 3,393	\$ 966	\$ 457	\$ 4,816
Year 13 (2032)	\$ 3,393	\$ 966	\$ 457	\$ 4,816
Year 14 (2033)	\$ 3,393	\$ 966	\$ 457	\$ 4,816
Year 15 (2034)	\$ 3,393	\$ 966	\$ 457	\$ 4,816
Year 16 (2035)	\$ 3,562	\$ 1,015	\$ 480	\$ 5,057
Year 17 (2036)	\$ 3,562	\$ 1,015	\$ 480	\$ 5,057
Year 18 (2037)	\$ 3,562	\$ 1,015	\$ 480	\$ 5,057
Year 19 (2038)	\$ 3,562	\$ 1,015	\$ 480	\$ 5,057
Year 20 (2039)	\$ 3,562	\$ 1,015	\$ 480	\$ 5,057
Year 21 (2040)	\$ 3,740	\$ 1,065	\$ 504	\$ 5,309
Year 22 (2041)	\$ 3,740	\$ 1,065	\$ 504	\$ 5,309
Year 23 (2042)	\$ 3,740	\$ 1,065	\$ 504	\$ 5,309
Year 24 (2043)	\$ 3,740	\$ 1,065	\$ 504	\$ 5,309
Year 25 (2044)	\$ 3,740	\$ 1,065	\$ 504	\$ 5,309
Year 26 (2045)	\$ 3,927	\$ 1,119	\$ 529	\$ 5,575
Year 27 (2046)	\$ 3,927	\$ 1,119	\$ 529	\$ 5,575
Year 28 (2047)	\$ 3,927	\$ 1,119	\$ 529	\$ 5,575
Year 29 (2048)	\$ 3,927	\$ 1,119	\$ 529	\$ 5,575
Year 30 (2049)	\$ 3,927	\$ 1,119	\$ 529	\$ 5,575

EXHIBIT D

New Construction Project Parcel PILOT Schedule

YEAR	SCHOOL PILOT 95%	CITY PILOT 95%	COUNTY PILOT 95%	PILOT PAYMENT TOTAL
Year 1	\$ 58,467	\$ 16,652	\$ 7,874	\$ 82,992
Year 2	\$ 58,467	\$ 16,652	\$ 7,874	\$ 82,992
Year 3 (2022)	\$ 58,467	\$ 16,652	\$ 7,874	\$ 82,992
Year 4 (2023)	\$ 58,467	\$ 16,652	\$ 7,874	\$ 82,992
Year 5 (2024)	\$ 58,467	\$ 16,652	\$ 7,874	\$ 82,992
Year 6 (2025)	\$ 61,390	\$ 17,484	\$ 8,267	\$ 87,141
Year 7 (2026)	\$ 61,390	\$ 17,484	\$ 8,267	\$ 87,141
Year 8 (2027)	\$ 61,390	\$ 17,484	\$ 8,267	\$ 87,141
Year 9 (2028)	\$ 61,390	\$ 17,484	\$ 8,267	\$ 87,141
Year 10 (2029)	\$ 61,390	\$ 17,484	\$ 8,267	\$ 87,141
Year 11 (2030)	\$ 64,459	\$ 18,359	\$ 8,681	\$ 91,499
Year 12 (2031)	\$ 64,459	\$ 18,359	\$ 8,681	\$ 91,499
Year 13 (2032)	\$ 64,459	\$ 18,359	\$ 8,681	\$ 91,499
Year 14 (2033)	\$ 64,459	\$ 18,359	\$ 8,681	\$ 91,499
Year 15 (2034)	\$ 64,459	\$ 18,359	\$ 8,681	\$ 91,499
Year 16 (2035)	\$ 67,683	\$ 19,276	\$ 9,114	\$ 96,074
Year 17 (2036)	\$ 67,683	\$ 19,276	\$ 9,114	\$ 96,074
Year 18 (2037)	\$ 67,683	\$ 19,276	\$ 9,114	\$ 96,074
Year 19 (2038)	\$ 67,683	\$ 19,276	\$ 9,114	\$ 96,074
Year 20 (2039)	\$ 67,683	\$ 19,276	\$ 9,114	\$ 96,074
Year 21 (2040)	\$ 71,067	\$ 20,240	\$ 9,570	\$ 100,877
Year 22 (2041)	\$ 71,067	\$ 20,240	\$ 9,570	\$ 100,877
Year 23 (2042)	\$ 71,067	\$ 20,240	\$ 9,570	\$ 100,877
Year 24 (2043)	\$ 71,067	\$ 20,240	\$ 9,570	\$ 100,877
Year 25 (2044)	\$ 71,067	\$ 20,240	\$ 9,570	\$ 100,877
Year 26 (2045)	\$ 74,620	\$ 21,252	\$ 10,049	\$ 105,921
Year 27 (2046)	\$ 74,620	\$ 21,252	\$ 10,049	\$ 105,921
Year 28 (2047)	\$ 74,620	\$ 21,252	\$ 10,049	\$ 105,921
Year 29 (2048)	\$ 74,620	\$ 21,252	\$ 10,049	\$ 105,921
Year 30 (2049)	\$ 74,620	\$ 21,252	\$ 10,049	\$ 105,921

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