

ORDINANCE 2022-26

AN ORDINANCE OF THE COUNTY OF BOONE, KENTUCKY (THE "COUNTY") ESTABLISHING A DEVELOPMENT AREA FOR ECONOMIC DEVELOPMENT PURPOSES WITHIN THE COUNTY OF BOONE, KENTUCKY, TO BE KNOWN AS THE UNION PROMENADE DEVELOPMENT AREA (THE "DEVELOPMENT AREA"); APPROVING A LOCAL PARTICIPATION AGREEMENT; ESTABLISHING AN INCREMENTAL TAX SPECIAL FUND FOR PAYMENT OF REDEVELOPMENT ASSISTANCE; DESIGNATING THE FINANCE DEPARTMENT OF THE COUNTY OF BOONE, KENTUCKY, AS THE AGENCY RESPONSIBLE FOR OVERSIGHT, ADMINISTRATION, AND IMPLEMENTATION OF THE DEVELOPMENT AREA; AND AUTHORIZING THE COUNTY JUDGE/EXECUTIVE AND OTHER OFFICIALS TO TAKE SUCH OTHER APPROPRIATE ACTIONS AS ARE NECESSARY OR REQUIRED IN CONNECTION WITH THE ESTABLISHMENT OF THE DEVELOPMENT AREA.

WHEREAS, the County of Boone, Kentucky (the "County") by pursuant to KRS 65.7041 to 65.7083, as may be amended (the "Act"), is authorized to, among other things, (1) establish a Development Area or development areas to encourage investment and development in the County, (2) enter into agreements in connection with the establishment of a development area or local development area, (3) establish a special fund for deposit of incremental revenues resulting from the development of a Development Area or development area, and (4) designate an agency to oversee, administer and implement projects within a Development Area or development area; and

WHEREAS, the Kentucky General Assembly has determined in KRS 65.7041 that the establishment of local development areas or development areas contribute to increased employment opportunities and increased economic development in communities across the Commonwealth and serves a public purpose; and

WHEREAS, the County desires to establish a "development area" as defined in the Act, to be known as the Union Promenade Development Area (the "Development Area") to encourage investment and development within such Development Area; and

WHEREAS, the County has agreed to support and encourage development within the Development Area by pledging Incremental Revenues [hereinafter defined] to pay for Public Infrastructure Costs [hereinafter defined] to promote the development of the Development Area under an Agreement [hereinafter defined]; and

WHEREAS, the County in accordance with the Act held a public hearing on October 25, 2022, after giving proper notice concerning the County's intention to establish the Development Area; and

WHEREAS, the establishment of the Development Area is for a public purpose and that the establishment and creation of the Development Area within the County is for the benefit and welfare of the County's citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY OF BOONE, KENTUCKY:

SECTION 1. Definitions.

1.1 The capitalized terms set forth below when used herein shall have the following meanings.

“Act” means Kentucky Revised Statutes, Sections 65.7041 to 65.7083.

“Agency” means the Finance Department of the County of Boone, Kentucky.

“Agreement” shall mean the Local Participation Agreement among the County, the Agency and the Developer attached as Exhibit “B” hereto.

“Development Area” means a contiguous geographic area of land being developed, located within the geographical boundaries of the County, which is created for economic development purposes by this Ordinance to support the Project proposed to be developed and consisting of approximately 62 acres, as more specifically described in Exhibit A attached hereto, to be known as the “Union Promenade Development Area”.

“Establishment Date” means the date that the Development Areas established pursuant to the Act and this Ordinance.

“Incremental Revenues” means the amount of revenues received by the County with respect to the Development Area by subtracting Old Revenues from New Revenues in a calendar year, and more specifically defined in the Agreement.

“Pledged Revenues” means the Incremental Revenues which are pledged by the County, as provided in the Agreement, to the pay for Redevelopment Assistance and related to the Development Area, as set forth in the Agreement.

“Project” means the development of the Development Area for the development of the Union Promenade Project as a mixed-use office, commercial, retail, restaurant and residential uses, being undertaken by 9541 US 42 LLC, an Ohio limited liability company, or its assigns (the “Developer”).

“Public Infrastructure Costs” means those costs as defined in the Agreement that are eligible to be paid for or reimbursed by Incremental Revenues.

1.2 All capitalized terms used herein and not defined above or in the recitals to this Ordinance shall have the meaning as set forth in the Act, as of the effective date of this Ordinance.

SECTION 2. Findings and Determinations. In accordance with the Act, the County hereby makes the following findings and determinations with respect to the Development Area:

2.1 The Development Area consists of a contiguous tract of land that is less than three square miles in size. The actual size of the Development Area approximately 62 acres;

2.2 The establishment of the Development Area will not cause the assessed taxable value of real property within the Development Area and within all “development areas” and “local development areas” established by the County (as those terms are defined in the Act) to exceed twenty percent (20%) of the total assessed taxable value of real property within the

County. The assessed value of taxable real property within the Development Area for calendar year 2021 was \$407,200 and the total assessed value of taxable real property within the County for the calendar year 2021 exceeds \$14 Billion. While the County has established other local development areas, in addition to the Development Area, the total taxable real property assessment within all such areas, including the Development Area is just a very small percentage of the County's total taxable real property assessment. Therefore, the assessed value of taxable real property within the Development Area is significantly less than twenty percent (20%) of the assessed value of taxable real property within the County;

2.3 The Development Area qualifies as "development area" under the Act to pursuant to the provisions of KRS 65.7043(2)(a)(1)(b)(iv). Normally Development Areas are for the development of previously developed land that meet certain blight factors as set forth in KRS 65.7049(3), unless the planned development of the Development Area contains a Project that may meet one of the exceptions set forth in KRS 65.7043(2)(a)(1)(b). The County has reviewed the Project and finds that the Development Area qualifies as a "development area" under the Act pursuant to the provisions of KRS 65.7043(2)(a)(1)(b)(iv), as follows:

- (a) The Project being a mixed-use office, commercial and residential project meets the definition of a "Mixed-Use Project" as set for in KRS 154.30-060, and will include a combination of residential, office, retail and restaurant uses;
- (b) The Development Area is located within an area that is under a federal storm water and sanitary sewer consent decree, pursuant to the provisions of the case of The Commonwealth of Kentucky, et al. vs. Sanitation District No. 1 of Northern Kentucky, Amended Consent Decree Case No. 2:05-CV-199-(WOB) (the "Consent Decree");
- (c) The construction of the Project will involve significant storm sewer and sanitary improvement to comply with the requirements of the Consent Decree. An existing Sanitation District No. 1 ("SD1") sanitary sewer will be relocated as part of the Project. In addition, new public sanitary sewer will be constructed and includes 12 inch diameter, 8 inch diameter, and 6 inch diameter gravity mains. The public portions of sanitary sewers will be constructed per SD1 and Kentucky Division of Water ("KDOW") regulations and will be within proposed public street rights-of ways or easements to be granted to SD1. Sanitary sewer flows will be part of the SD1 sewer system along the Fowler Fork of the Gunpowder Creek, Gunpowder Creek, and ultimately to the Western Regional Wastewater Treatment Plant, WWTP). In addition, several existing Kentucky Transportation Cabinet ("KYTC") storm sewers, from US 42, will be extended through the Project site to allow for grading and the construction of the proposed public roadways. Storm sewers will also be constructed along the proposed public streets. These proposed public storm sewers will be constructed per SD1 regulations, and in compliance with the Consent Decree and will become part of the SD1 and City's system. SD1 has authority over public storm sewers, detention, and water quality requirements for the Northern Kentucky region. As part of this Project public storm sewers and two regional detention ponds/lakes will be constructed. The storm sewers will be constructed per SD1 regulations.

These public storm sewers will be constructed in public rights-of-ways or in easements to be dedicated to SD1. The direct cost of the sanitary sewer improvements, storm sewer improvements, and storm sewer detention, not including necessary site modifications, are estimated to be \$2,955,909. When considering the land costs for the sanitary, storm sewers and storm detention to be dedicated to the public, and the design and other soft costs, the total cost of the sanitary and storm sewer improvements will exceed \$4,000,000. The sanitary and storm sewer improvements will be completed in accordance with the plans and specifications approved by SD1 and will be in furtherance of any Federal Consent Decree requirements.

2.4 The County finds the Development Area is not reasonably expected be successful financially without public assistance including, but not limited to, assistance available under the Act, and from the proceeds of Industrial Revenue Bonds issued by the City of Union, Kentucky (the "City") referenced below, which the County participated through the pledge of a portion of the County's real property taxes generated from the Project through the execution of an Agreement In Lieu of Taxes. The total site development and infrastructure costs, exclusive of land acquisition, to construct the Project exceeds \$20 Million. Project financing is not feasible without incentives, including, but not limited to, incentives under the Act to cover in-part the site development and infrastructure costs that are needed for the construction of the Project. As part of the approval the issued Industrial Revenue Bonds pursuant to KRS Chapter 103, that generated \$10,501,823.13 in net construction funds (the "IRB Incentives") to pay for public infrastructure costs for the Project, the Developer engaged the Catalytic Funding Corp. of Northern Kentucky (the "Catalytic Fund") to study the Project's finances and the need for incentives. The study prepared by the Catalytic Fund, a summary of which is attached as Exhibit D to the Development Plan, showed that without incentives the Project had a funding gap of \$19.9 Million. While the incentives won't cover all of that funding gap, combined TIF and IRB Incentives to the Project will allow for a rate of return to the Developer of under ten percent (10%), which makes the Project viable. The Catalytic Fund study noted that normally developers would expect to receive a much higher return for similar projects.

2.5 The County finds that the public benefits of developing the Development Area justify the public costs involved. It is estimated that providing incentives through the establishment of the Development Area combined with other incentives available has the potential of increasing new investment within the Development Area by over \$170 Million, and is estimate to create 654 new jobs with an estimated gross payroll of \$29,396,000. The resulting economic impact from the Project will more than offset the incentives recommended through the establishment of the Development Area. In addition, the new capital investment and jobs will encourage new residential and commercial development outside of the Development Area to support the job growth. While this Development Plan recommends the County commit a portion of the incremental increase in payroll occupational taxes to pay for redevelopment assistance within the Development Area, the pledge will not impact any regular occupational taxes the County will collect from the Project. The establishment of the Development Area will not impact any County tax revenues that will otherwise be generated within the Development Area. The Project will generate other taxes to the County and other taxing districts, including real property taxes, tangible property taxes, etc., which will not be impacted by any pledge of incremental revenues through the establishment by the County of the Development Area.

2.6 The County finds that the area immediately surrounding the Development Area has been subject to growth and development through investment by private enterprise, but that

the extreme cost of site development and infrastructure costs needed for the Project justifies the pledge of tax increment from the County to support the Project.

2.7 The County finds the Development Area is not reasonably expected to develop without public assistance including, but not limited to, assistance available under the Act. The total site development and infrastructure costs, exclusive of land acquisition, to construct the Project exceeds \$20 Million. Project financing is not feasible without incentives, including, but not limited to, incentives under the Act to cover in-part the site development and infrastructure costs that are needed for the construction of the Project.

SECTION 3. Establishment, Name, Boundaries. All that area described herein by Exhibit A attached hereto and made a part hereof, is located within the County and is hereby established and designated as the "Union Promenade Development Area". At the time of the enactment of this Ordinance the Development Areas less than three square miles in area, being 62 acres in size.

SECTION 4. Establishment Date, Commencement Date, Termination date. The Establishment Date is the effective date of this Ordinance. The Commencement Date of the Development Areas the date of execution of the Agreement and the Termination Date shall be exactly thirty (30) years subsequent to the Activation Date of the Agreement relating to the Development Area. However, the Termination Date for the Development Area shall in no event be more than forty (40) years from the Establishment Date.

SECTION 5. Adoption of Development Plan. The County hereby adopts the Development Plan attached to this Ordinance as Exhibit C. The hereby finds and determines that a public hearing was duly held on October 25, 2022, to solicit public comment on the Development Plan, following publication of notice thereof in accordance with Chapter 424 of the Kentucky Revised Statutes, as amended. It is hereby confirmed that a copy of the Development Plan was filed with offices of the County Judge/Executive, and with the County Clerk of the County prior to the notice of the public hearing being advertised.

SECTION 6. Agreement. The County Judge/Executive of the County is hereby authorized and directed to execute, acknowledge and deliver on behalf of the County a Agreement, a form of which is attached as Exhibit B and made a part hereof, among the County, the Agency and Developer, authorizing the pledge of the Incremental Revenues of the County from the Development Aerator the payment of Public Infrastructure Costs, but not to exceed the amounts as set forth in the Agreement. The form of the Agreement to be signed by the County Judge/Executive on behalf of the County and Agency shall be in substantially the form attached hereto, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the County. The approval of such changes by said officers, and that such changes are not substantially adverse to the County, shall be conclusively evidenced by the execution of such Agreement by such officials.

SECTION 7. Job Assessment Fee. Pursuant to the provisions of KRS 65.7056, the County hereby establishes as a condition of employment within the Development Area, a job assessment fee of two percent (2%) of the gross wages of newly created employees as a result of the Project within the Development Area. The job assessment fee shall be withheld by employers within the Development Area and paid to the County in accordance with the requirements and procedures established by the County. The Job Assessment Fee, shall be used to pay Public Infrastructure Cost Costs in accordance with the Agreement, and the Act.

SECTION 8. Special Fund. There is hereby established a Special Fund of the County to be known as the Union Promenade Development Area Tax Increment Fund, into which the County covenants to deposit, and into which the County officials are hereby authorized and directed to deposit all Pledged Revenues. The County shall maintain the Special Fund unencumbered except for the purposes set forth in Section 7 hereof. Funds deposited in the Special Fund shall be disbursed in accordance with the Act, this Ordinance, the Agreement, and related documents to pay for Public Infrastructure Costs within the Development Area.

SECTION 9. Use of Pledged Revenues. Pledged Revenues shall be deposited by the County into the Special Fund created under Section 7 hereof and shall be used solely to pay for Infrastructure and Site Development Costs in accordance with the Agreement, as the same may be amended from time to time.

SECTION 10. Periodic Accounting/Analysis. Any entity, other than the County that receives financial assistance pursuant to the provisions of this Ordinance, whether in the form of a grant or loan or loan guarantee shall make a periodic accounting to the governing body of the County in accordance with the Act and the documents controlling such grant, loan or loan guarantee. The governing body of the County shall be required to review and analyze the progress of the development activity in the Development Aeron an annual basis. Such review and analysis shall at a minimum include a review of the progress in meeting the stated goals of the Development Area. The County Judge/Executive and other officials of the County shall report to the governing body of the County during such reviews and shall when necessary invite developers to participate in the review process to report on the progress of their developments within the Development Area.

SECTION 11. Designation of Oversight Agency. Pursuant to the Act, the County hereby designates Finance Department of the County of Boone, Kentucky, as the Agency for purposes of oversight, administration and review responsibility of this Development Area Ordinance, the Agreement and the Development Area established hereby. The Agency shall act on behalf of the County in administering the Development Area, entering into the Agreement, and other related agreements, with respect to the development of the Development Area.

SECTION 12. Severability. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION 13. Repeal of Conflicting Orders and Ordinances. All prior resolutions, municipal orders or ordinances or parts of any resolution, municipal order or ordinance in conflict herewith are hereby repealed.


SECTION 14. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation, recordation and publication of a summary hereof pursuant to KRS Chapter 424.

GIVEN FIRST-READING APPROVAL AT A DULY CONVENED MEETING OF THE FISCAL COURT OF THE COUNTY OF BOONE, KENTUCKY, held on the 25th day of October, 2022.

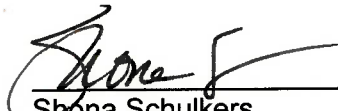
GIVEN SECOND READING AND ADOPTED AT A DULY CONVENED MEETING OF THE FISCAL COURT OF THE COUNTY OF BOONE, KENTUCKY, held on the 15th day of November, 2022 and on the same occasion signed by the County Judge/Executive as evidence

of his approval, attested by the Clerk, published and filed as required by law, and declared to be in full force and effect from and after its adoption and approval according to law.

Approved:

By 
Gary W. Moore, Judge/Executive
Boone County Fiscal Court

ATTEST:


Shona Schulkers,
Fiscal Court Clerk

Amendments to Local Participation Agreement

WHEREAS, pursuant to the Development Area Ordinance, the Fiscal Court of the County has authorized the County Judge/Executive to execute and enter into this Agreement among the Agency, and the Developer; and

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, and in consideration of the premises and the mutual covenants and undertakings contained herein, it is agreed and covenanted by and among the Parties hereto as follows:

SECTION I.
Preambles

The Parties hereto agree that the above "preambles" or "preamble clauses" are incorporated herein by reference as if fully restated herein and form a part of the agreement among the Parties hereto.

SECTION II.
Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

1. **"Act" or "the Act"**. Shall mean KRS 65.7041 to KRS 65.7083.
2. **"Activation Date"**. Shall have the meaning as defined by the Act, and as provided in Section XI of this Agreement.
3. **"Administrative Fee"**. Shall be two percent (2%) of the Incremental Revenues which shall be retained by the County to cover its costs of administration and implementation of the Development Area.

3. The Developer shall not less than annually, until the Project is fully constructed, submit to the Agency certified statements of costs that have been expended by the Developer or its assigns for Capital Investment for the Project, including the cost expended for Public Infrastructure Costs.

4. The Developer shall meet as requested by the County to provide updates to the County as to its progress in construction of the Project, and shall provide information as requested by the County and Agency to enable the Agency to provide its required annual reports to the Boone County Fiscal Court.

5. The Developer shall assist the Agency as necessary with the computation of the Incremental Revenues. In that regard, businesses within the Development Area shall be required to maintain separate County occupational license accounts (assuming they have more than one business location in the County) for their operation within the Development Area to make it easier for the County and Agency to track and compute Incremental Revenues.

6. After the issuance of the IRBs, the Developer shall provide an accounting to the County and Agency that lists those costs and the amounts of Public Infrastructure Costs that will be paid from the proceeds of the IRBs, so those costs may be deducted from the Public Infrastructure Costs that are eligible to be paid for or reimbursed from Incremental Revenues.

or restated from time to time, and made a part of the trust estate established thereunder for the security of the Bonds as more particularly set forth therein.

5. If Bonds are not issued, or if Bonds are issued, but there are Excess Incremental Revenues, Incremental Revenues may be utilized by the Agency, to pay for Public Infrastructure Costs expended by the Developer that are not paid for by Bonds.

6. Any Incremental Revenues due the Developer in accordance with SECTION VII (1) of this Agreement shall be paid to the Developer and/or Trustee (in the event Bonds are issued) within thirty (30) days from the date of their receipt by the Agency.

7. After the Public Infrastructure Costs expended by the Developer have been fully paid, including any Bonds, any Incremental Revenues may be used to reimburse any other costs authorized by the County, or the County may, at its option, terminate the Development Area and this Agreement.

8. At the Termination Date, as defined in the Act and as provided in SECTION VII of this Agreement, all amounts not needed to pay the Bonds or to pay Redevelopment Assistance as authorized by this Agreement, shall be transferred to the General Fund of the County.

SECTION VIII.
Anticipated Benefits to the County

The County anticipates receiving substantial benefits as a result of the pledge of its Incremental Revenues to support development of the Project and the Development Area as set forth herein. The taxable assessment for calendar year 2021 for the Development Area is \$407,200, which generated approximately \$399 in County real

If to the County: County Judge/Executive
2950 Washington Street
Burlington, Kentucky 41005

With a Copy to: County Attorney
P.O. Box 900
2950 Washington Street
Burlington, Kentucky 41005

If to the Agency: Finance Department of the County
2950 Washington Street
Burlington, Kentucky 41005

If to the Developer: 9541 US 42 LLC
4010 North Bend Road, Suite 301
Cincinnati, Ohio 45211
Attn: Ralph Meierjohan

SECTION XVII.
Approvals

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

SECTION XVIII.
Entirety of Agreement

As used herein, the term "Agreement" shall mean this Local Participation Agreement and the Exhibits attached hereto. This Agreement embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements, and understandings relating to the subject matter hereof. No representation, promise,

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

COUNTY OF BOONE, KENTUCKY

By: _____
Gary W. Moore
County Judge/Executive

FINANCE DEPARTMENT OF THE COUNTY OF BOONE, KENTUCKY, Acting by and through Gary W. Moore, County Judge/Executive

By: _____
Gary W. Moore
County Judge/Executive

9541 US 42 LLC, an Ohio limited liability company

By: _____
Ralph Meierjohan

Its: _____

WHEREAS, pursuant to the Development Area Ordinance, the Fiscal Court of the County has authorized the County Judge/Executive to execute and enter into this Agreement among the Agency, and the Developer; and

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, and in consideration of the premises and the mutual covenants and undertakings contained herein, it is agreed and covenanted by and among the Parties hereto as follows:

SECTION I.
Preambles

The Parties hereto agree that the above "preambles" or "preamble clauses" are incorporated herein by reference as if fully restated herein and form a part of the agreement among the Parties hereto.

SECTION II.
Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

1. **"Act" or "the Act"**. Shall mean KRS 65.7041 to KRS 65.7083.
2. **"Activation Date"**. Shall have the meaning as defined by the Act, and as provided in Section XI of this Agreement.
3. **"Administrative Fee"**. Shall be ~~two percent (2%)~~ **four percent (4%)** of the Incremental Revenues which shall be retained by the County to cover its costs of administration and implementation of the Development Area.

3. The Developer shall not less than annually, until the Project is fully constructed, submit to the Agency certified statements of costs that have been expended by the Developer or its assigns for Capital Investment for the Project, including the cost expended for Public Infrastructure Costs.

4. The Developer shall meet as requested by the County to provide updates to the County as to its progress in construction of the Project, and shall provide information as requested by the County and Agency to enable the Agency to provide its required annual reports to the Boone County Fiscal Court.

5. The Developer shall assist the Agency as necessary with the computation of the Incremental Revenues. In that regard, businesses within the Development Area shall be required to maintain separate payroll journals for their business activities ~~County occupational license accounts~~ (assuming they have more than one business location in the County) for their operation within the Development Area to make it easier for the County and Agency to track and compute Incremental Revenues.

6. The Developer shall provide to the County Finance Department the names and contact information of tenants and other businesses that locate within the Local Development Area at the time they execute a lease agreement, and other relevant information as may be required by the Finance Department, to assist the collection compute the Incremental Revenues pledged herein. In addition, the Developer shall provide to lessees/tenants within the Local Development Area relevant information regarding the Local Development Area, including the requirement of the special payroll tax assessment applicable within the Local Development Area.

principal, interest and premium, if any, on Bonds issued to pay for Redevelopment Assistance in the event that Bonds are issued to pay for Redevelopment Assistance.

4. If Bonds are issued, this Agreement may be pledged and assigned by the Agency, the County and the Developer to a Trustee under a certain Trust Indenture for the Bonds, by and between the County, Agency and the Trustee, as it may be amended or restated from time to time, and made a part of the trust estate established thereunder for the security of the Bonds as more particularly set forth therein.

5. If Bonds are not issued, or if Bonds are issued, but there are Excess Incremental Revenues, Incremental Revenues may be utilized by the Agency, to pay for Public Infrastructure Costs expended by the Developer that are not paid for by Bonds.

6. Any Incremental Revenues due the Developer in accordance with SECTION VII (1) of this Agreement shall be paid to the Developer and/or Trustee (in the event Bonds are issued) within thirty (30) days from the date of their receipt by the Agency. In the event Bonds have not been issued, the Agency may withhold Incremental Revenues due the Developer if the Developer is delinquent with any occupational tax filings due the County, until such delinquency is remedied.

7. After the Public Infrastructure Costs expended by the Developer have been fully paid, including any Bonds, any Incremental Revenues may be used to reimburse any other costs authorized by the County, or the County may, at its option, terminate the Development Area and this Agreement.

8. At the Termination Date, as defined in the Act and as provided in SECTION VII of this Agreement, all amounts not needed to pay the Bonds or to pay

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

If to the County:	County Judge/Executive 2950 Washington Street Burlington, Kentucky 41005
With a Copy to:	County Attorney P.O. Box 900 2950 Washington Street Burlington, Kentucky 41005
If to the Agency:	Finance Department of the County 2950 Washington Street Burlington, Kentucky 41005
If to the Developer:	9541 US 42 LLC 4010 North Bend Road, Suite 301 Cincinnati, Ohio 45211 Attn: Thomas J. Ackermann
	With Copy to: Keating Muething & Klekamp PLL One East 4 th Street, Suite 1400 Cincinnati, Ohio 45202 Attn: James E. Parsons

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

COUNTY OF BOONE, KENTUCKY

By: _____
Gary W. Moore
County Judge/Executive

FINANCE DEPARTMENT OF THE COUNTY OF
BOONE, KENTUCKY, Acting by and through
Gary W. Moore, County Judge/Executive

By: _____
Gary W. Moore
County Judge/Executive

9541 US 42 LLC, an Ohio
limited liability company

By: _____
Thomas J. Ackermann

Its: _____

Local Participation Agreement

LOCAL PARTICIPATION AGREEMENT
FOR
UNION PROMENADE DEVELOPMENT AREA
BY AND AMONG
COUNTY OF BOONE, KENTUCKY
AND
FINANCE DEPARTMENT OF THE COUNTY OF BOONE, KENTUCKY
AND
9541 US 42 LLC
October 1, 2022

Exhibit A – Map and Legal Description of the Development Area
Exhibit B – Public Infrastructure Costs

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TO
LOCAL PARTICIPATION AGREEMENT
DATED
October 1, 2022

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LOCAL PARTICIPATION AGREEMENT
Union Promenade Development Area

THIS LOCAL PARTICIPATION AGREEMENT (this "Agreement") is made as of the 1st day of October, 2022 (the "Effective Date") by and among the COUNTY OF BOONE, KENTUCKY, a Kentucky county organized under the laws of the Commonwealth of Kentucky (the "County"), the FINANCE DEPARTMENT OF THE COUNTY OF BOONE, KENTUCKY, a duly established department of the County (the "Agency") and 9541 US 42 LLC, an Ohio limited liability company (the "Developer" and collectively, the "Parties");

RECITALS

WHEREAS, pursuant to the Act as hereinafter defined, the County on the 15th day of November, 2022, adopted Ordinance Number 2022-26, (the "Development Area Ordinance"), whereby it established the Union Promenade Development Area (the "Development Area") for the purpose of promoting a mixed-use commercial, office and residential development within the County being constructed by Developer; and

WHEREAS, the State has determined in KRS 65.7041 that the establishment of development areas or local development areas contribute to increased employment opportunities and increased economic development in communities across the Commonwealth and serves a public purpose; and

WHEREAS, the Parties desire to set forth the duties and responsibilities of the Parties with respect to the administration, financing and pledging of Incremental Revenues [as hereinafter defined] in support of the development of the Project within the Development Area; and

WHEREAS, pursuant to the Development Area Ordinance, the Fiscal Court of the County has authorized the County Judge/Executive to execute and enter into this Agreement among the Agency, and the Developer; and

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, and in consideration of the premises and the mutual covenants and undertakings contained herein, it is agreed and covenanted by and among the Parties hereto as follows:

SECTION I.
Preambles

The Parties hereto agree that the above “preambles” or “preamble clauses” are incorporated herein by reference as if fully restated herein and form a part of the agreement among the Parties hereto.

SECTION II.
Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

1. “Act” or “the Act”. Shall mean KRS 65.7041 to KRS 65.7083.
2. “Activation Date”. Shall have the meaning as defined by the Act, and as provided in Section XI of this Agreement.
3. “Administrative Fee”. Shall be four percent (4%) of the Incremental Revenues which shall be retained by the County to cover its costs of administration and implementation of the Development Area.

4. "Agency". Shall mean the Finance Department of the County of Boone, Kentucky.

5. "Agreement". Shall mean this Local Participation Agreement, including all Exhibits attached hereto.

6. "Bonds". Shall mean the bonds or notes, secured and supported by the Incremental Revenues, issued by the County to pay for Redevelopment Assistance within the Development Area, in accordance with this Agreement.

7. "Bond Documents". Shall mean all of the documents constituting the bond transcript of proceedings in connection with the Bonds.

8. "Capital Investment". Shall have the meaning as set forth under the Act, and shall include any capital cost incurred to construct the Project.

9. "County". Shall mean the County of Boone, Kentucky.

10. "Developer". Shall mean 9541 US 42 LLC, an Ohio limited liability company, or its assigns.

11. "Effective Date". Shall have the meaning given in the introductory paragraph of this Agreement.

12. "Excess Incremental Revenues". Means Incremental Revenues in excess of the amounts required to support the payment of Bonds and to meet any coverage tests as set forth in the Bond Documents.

13. "Financing Plan". Shall mean the plan for financing the Project as described in SECTION X of this Agreement, as it may be amended with the approval of the County and the Agency.

14. “General Payroll Tax.” Shall mean the County’s occupational tax on gross salaries of employees working in Boone County, as set forth in Section 110.03 of the Code of Ordinances of the County, but shall not include the special occupational tax set forth in Section 110.27 of the Code of Ordinances of the County.

15. “Incremental Revenues.” Shall mean the amount of tax revenues received by the County from the Special Payroll Tax Assessment, after deducting therefrom the General Payroll Tax applicable to the gross wages from employees subject to the Special Payroll Tax Assessment, generated from the Development Area in each calendar year after the Activation Date, established in accordance with Section XI of this Agreement.

16. “IRBs.” Shall mean the special obligation industrial building revenue bonds issued by the City of Union, Kentucky, supported by certain PILOT Tax Revenues generated by the Project, that were issued to fund \$10,501,823.13 of the Public Infrastructure Costs related to the Project.

17. “KEDFA.” Shall mean the Kentucky Economic Development Finance Authority, a State agency assigned for administrative purposes to the Kentucky Economic Development Cabinet.

18. “Development Area.” Shall have the meaning given in the Recitals to this Agreement, and more specifically described on Exhibit A attached hereto.

19. “Development Area Ordinance.” Shall mean the ordinance referred to in the Recitals section of this Agreement.

20. "Project". Shall mean the comprehensive development being undertaken by the Developer within the Development Area described in SECTION IX of this Agreement.

21. "Project Costs". Shall mean any capital investment as defined in the Act, necessary to construct the Project.

22. "Public Infrastructure Costs". Shall mean those costs, including the interest or financing costs thereon, identified in Exhibit "B", which shall be constructed by the Developer, which are eligible to be paid for or reimbursed by Incremental Revenues; provided the capital costs recoverable for the Public Infrastructure Costs identified on Exhibit B shall be capped at \$8,800,000, plus the actual interest or financing costs thereon, but not to exceed six percent 6% per annum; provided, however, the Public Infrastructure Costs to be paid for or reimbursed by the IRBs shall not be eligible to be reimbursed or paid from Incremental Revenues.

23. "Redevelopment Assistance". Shall be the costs pledged by the County to be paid for or reimbursed by Incremental Revenues, which shall include the Administrative Fee, the Public Infrastructure Costs and other costs as set forth in the Local Development Ordinance, and in accordance with SECTION VII of this Agreement.

24. "Special Payroll Tax Assessment". Shall be the two percent (2%) Special Occupational Payroll Tax applicable to the new jobs created by the Project in the Development Area established by the Development Area Ordinance, authorized by KRS 65.7057 of the Act.

25. "Special Fund". Shall mean Union Promenade Development Area Special Fund established by the County and maintained by the Agency for the purpose of holding and disbursing the Incremental Revenues pledged herein.

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

30. "Unavoidable Delays". Shall mean delays due to labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, governmental regulations not in effect at the date of execution of this Agreement, conditions that could not have been reasonably foreseen by the claiming party, inability to obtain construction materials or energy, fire, or unavoidable casualty, provided such matters are beyond the reasonable control of the party claiming such delay.

SECTION III. Parties

The Parties to this Agreement shall be the County, the Agency and the Developer.

SECTION IV. Duties and Responsibilities of County

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

1. Provide for the establishment of the Special Fund to be maintained by the Agency for the collection of Incremental Revenues pledged herein from County within the Development Area.

2. Pledge one hundred percent (100%) of the County's Incremental Revenues generated within the Development Area for a thirty (30) year period

beginning with the Activation Date to pay for Redevelopment Assistance within the Development Area, which pledge is made in SECTION VII herein.

3. Act as the issuer of Bonds, in the event that Bonds are issued, to pay for Redevelopment Assistance within the Development Area.

4. Designate the Agency as the entity responsible for the oversight, administration, and implementation of the Development Area Ordinance.

5. Meet as necessary with the Developer and the Agency and Developer for the purpose of reviewing the progress of the development of the Development Area and prepare an analysis of such progress for distribution to the respective Fiscal Court of the County.

SECTION V.
Duties and Obligations of the Agency

1. The Agency shall have the responsibility for the oversight, administration of the Development Area Ordinance, including the obligation to maintain the Special Fund for the deposit and disbursement of Incremental Revenues in accordance with this Agreement, and the Act.

2. The Agency shall hold and expend the Incremental Revenues in accordance with this Agreement to pay for Redevelopment Assistance within the Development Area.

3. The Agency shall prepare by no later than June 1st of each year during the term of this Agreement an annual report and provide same to the Fiscal Court of the County that shall include, but not be limited to: (a) the total real property taxes, and occupational taxes collected within the Development Area during the previous calendar

year; (b) a determination of Incremental Revenues and other tax revenues collected within the Development Area during the previous calendar year; (c) a summary of debt service paid on outstanding Bonds during the previous calendar year; (d) the amount, if any, of Bonds issued during the previous calendar year, and (e) if no Bonds are issued, the amount, if any, of Incremental Revenues expended from the Special Fund on Redevelopment Assistance.

4. On or before June 1 after the end of the first calendar year after the Activation Date, and then each year thereafter by June 1, so long as the pledge of Incremental Revenues as provided in this Agreement is in effect, the Agency shall calculate the Incremental Revenues from the Development Area for the previous calendar year to the County, and shall calculate and provide written notice to the County the Incremental Revenues that are due from the County, and by June 30 of that year and each June 30 thereafter, so long as the pledge of Incremental Revenues as provided in this Agreement is in effect.

SECTION VI.
Duties and Obligations of the Developer

1. The Developer, shall be responsible for constructing and paying for the cost of the Project and the Public Infrastructure Costs, subject to the pledge of the Incremental Revenues as set forth in this Agreement.

2. The Project shall be constructed in accordance with all applicable zoning, building and other related governmental permits and approvals required for the development of property in Boone County and the State.

3. The Developer shall not less than annually, until the Project is fully constructed, submit to the Agency certified statements of costs that have been expended by the Developer or its assigns for Capital Investment for the Project, including the cost expended for Public Infrastructure Costs.

4. The Developer shall meet as requested by the County to provide updates to the County as to its progress in construction of the Project, and shall provide information as requested by the County and Agency to enable the Agency to provide its required annual reports to the Boone County Fiscal Court.

5. The Developer shall assist the Agency as necessary with the computation of the Incremental Revenues. In that regard, businesses within the Development Area shall be required to maintain separate payroll journals for their business activities (assuming they have more than one business location in the County) within the Development Area to make it easier for the County and Agency to track and compute Incremental Revenues.

6. The Developer shall provide to the County Finance Department the names and contact information of tenants and other businesses that locate within the Development Area at the time they execute and lease agreement, and other relevant information as may be required by the Finance Department, to assist the collection and computation of the Incremental Revenues pledged herein. In addition, the Developer shall provide lessees/tenants within the Development Area relevant information regarding the Development Area, including the requirement of the Special Payroll Tax Assessment applicable within the Development Area.

7. After the issuance of the IRBs, the Developer shall provide an accounting to the County and Agency that lists those costs and the amounts of Public Infrastructure Costs that will be paid from the proceeds of the IRBs, so those costs may be deducted from the Public Infrastructure Costs that are eligible to be paid for or reimbursed from Incremental Revenues.

SECTION VII.
Identification and Pledge of Incremental Revenues

1. The County hereby pledges the Incremental Revenues, generated within the Development Area, to pay for Redevelopment Assistance within the Development Area for a thirty (30) year period starting from the Activation Date.

2. Incremental Revenues pledged by the County in this SECTION VII shall be deposited annually, no later than each June 30th after the first calendar year after the Activation Date, to the Special Fund and used solely for the payment of Redevelopment Assistance in accordance with the following priority:

- a. First to the payment of the Administrative Fee due to the County; and
- b. Secondly, to the Developer to pay for or reimburse Public Infrastructure Costs documented by the Developer as being paid to the Agency in accordance with SECTION VI of this Agreement; with the understanding that any Incremental Revenues due the Developer shall first be used to pay the annual required debt service on the Bonds, in the event Bonds are issued.

3. All amounts in the Special Fund, together with interest accruing thereon, are hereby irrevocably pledged to the payment of Redevelopment Assistance, including

principal, interest and premium, if any, on Bonds issued to pay for Redevelopment Assistance in the event that Bonds are issued to pay for Redevelopment Assistance.

4. If Bonds are issued, this Agreement may be pledged and assigned by the Agency, the County and the Developer to a Trustee under a certain Trust Indenture for the Bonds, by and between the County, Agency and the Trustee, as it may be amended or restated from time to time, and made a part of the trust estate established thereunder for the security of the Bonds as more particularly set forth therein.

5. If Bonds are not issued, or if Bonds are issued, but there are Excess Incremental Revenues, Incremental Revenues may be utilized by the Agency, to pay for Public Infrastructure Costs expended by the Developer that are not paid for by Bonds.

6. Any Incremental Revenues due the Developer in accordance with SECTION VII (1) of this Agreement shall be paid to the Developer and/or Trustee (in the event Bonds are issued) within thirty (30) days from the date of their receipt by the Agency. In the event Bonds have not been issued, the Agency may withhold Incremental Revenues due the Developer if the Developer is delinquent with any occupational tax filings due the County, until such delinquency is remedied.

7. After the Public Infrastructure Costs expended by the Developer have been fully paid, including any Bonds, any Incremental Revenues may be used to reimburse any other costs authorized by the County, or the County may, at its option, terminate the Development Area and this Agreement.

8. At the Termination Date, as defined in the Act and as provided in SECTION VII of this Agreement, all amounts not needed to pay the Bonds or to pay

Redevelopment Assistance as authorized by this Agreement, shall be transferred to the General Fund of the County.

SECTION VIII.
Anticipated Benefits to the County

The County anticipates receiving substantial benefits as a result of the pledge of its Incremental Revenues to support development of the Project and the Development Area as set forth herein. The taxable assessment for calendar year 2021 for the Development Area is \$407,200, which generated approximately \$399 in County real property taxes. The construction of the Project and related development is estimated to increase the taxable assessment within the Development Area by up to \$170 Million, and create approximately 654 new jobs with an estimated gross payroll of \$29,396,000, which will generate significant new tax revenues to the County, even with deducting the Incremental Revenues pledged within this Agreement. \$170 Million in increased taxable assessments within the Development Area will increase County real property taxes by \$166,600, based on the County's current real property tax rate. In addition, the Project will generate significant new occupational taxes from the growth in employment and new businesses within the Development Area as a result of the Project. The net tax impact will increase over time as assessments and new payroll increase. In addition, the net tax impact or benefit to the County will also increase from tax revenues not subject to the pledge of Incremental Revenues as provided by this Agreement, including the tangible taxes, etc., and will greatly increase the taxes to the other State and local taxing districts.

The maximum amount of Incremental Revenues to be paid by the County shall be one hundred percent (100%) of the Incremental Revenues from the Development

Area. The maximum number of years the payment of Incremental Revenues to support the payment of Redevelopment Assistance within the development of the Development Area is thirty (30) years.

A detailed description of the Development Area is set forth in Exhibit A hereto.

SECTION IX.
Description of Project; Costs

The Project planned for the Development Area is a mixed-use commercial and residential project that will include office, commercial, retail and residential uses. The estimated total capital investment of the Project when fully developed is approximately \$170 Million, and has the potential to create an estimated 64 new jobs with an estimated gross payroll of \$29,396,000 Million, that will be subject to the County's occupational payroll taxes. \$170 Million in new taxable assessment based on the County's 2021 real property *ad valorem* rate will generate over \$166,600 in new real estate taxes, and this does not included the new occupational and payroll taxes that will be generated to the County that will not be subject to the pledge of Incremental Revenues.

SECTION X.
Financing Plan

It is anticipated by the Parties that the construction of the Project will take place over time and require a combination of funding from the Incremental Revenues pledged herein, private financing, and private equity. Except for the Incremental Revenues pledged herein to pay debt service on Bonds and/or to reimburse the Developer for Public Infrastructure Costs, the cost and financing of the Project shall be the responsibility of the Developer or its assigns. In the event that Bonds are issued to pay for Public Infrastructure Costs, any Incremental Revenues pledged by the County under

this Agreement shall first be used to pay any required debt service on the Bonds as provided in the Bond Documents; and any Excess Incremental Revenues, may be expended to pay for other Redevelopment Assistance in accordance with this Agreement or as determined by the Agency with approval of the County.

IT IS UNDERSTOOD SPECIFICALLY BY THE PARTIES, THAT THE NOTES OR BONDS THAT MAY BE ISSUED BY THE COUNTY PURSUANT TO THIS AGREEMENT AND SECURED SOLELY BY INCREMENTAL REVENUES SHALL NOT CONSTITUTE A DEBT OF THE COUNTY OR THE AGENCY OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE COUNTY, AND THE COUNTY SHALL HAVE NO OBLIGATION TOWARD THE PAYMENT OF SUCH BONDS BEYOND THE PLEDGE OF INCREMENTAL REVENUES AS PROVIDED IN THIS AGREEMENT.

SECTION XI.

Commencement Date; Activation Date; Termination Date

This Agreement shall commence and be effective on October 1, 2022. The Activation Date for the pledge of Incremental Revenues as set forth in SECTION VII hereof shall be set by action of the County and Agency, with approval by the Developer, on the first day of the calendar year, but not more than four (4) years after the Effective Date. This Agreement shall terminate thirty (30) years after the Activation Date. This Agreement shall not terminate upon the execution of any deeds or other agreements required or contemplated by this Agreement, or referred to herein, and the provisions of this Agreement shall not be deemed to be merged into the deeds, or any other such deeds or other agreements, it being the intent of the parties hereto that this Agreement shall survive the execution and delivery of any such agreements.

SECTION XII.

Default

If the County (a "Defaulting Party") shall default in its obligation to make payments of Incremental Revenues set forth herein or in the Bond Documents, the Agency (unless it is the Defaulting Party) and/or the indenture trustee or trustees for outstanding Bonds secured by such Incremental Revenues shall have the power to enforce the provisions of this Agreement or the Bond Documents against the Defaulting Party. If any Party materially breaches or defaults on any of its obligations under this Agreement, any other party and/or the indenture trustee or trustees for the outstanding Bonds may give notice that remedial action must be taken within thirty (30) days. The Defaulting Party shall correct such breach or default within thirty (30) days after such notice, provided however, that if (i) the default is one which cannot with due diligence be remedied by the Defaulting Party within thirty (30) days and (ii) the Defaulting Party proceeds as promptly as reasonably possible after such notice and with all due diligence to remedy such default, the period after such notice within which to remedy the default shall be extended for such period of time as may be necessary to remedy the same with all due diligence.

However, notwithstanding any other provision of this Agreement, in the event of a default no remedy shall permit the withholding by the County of the payment of any Incremental Revenues pledged in this Agreement if Bonds or other debt are outstanding that are secured by a pledge of those Incremental Revenues.

SECTION XIII.
Governing Law

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

SECTION XIV.
Severability

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

SECTION XV.
Force Majeure

The County, Agency or Developer shall not be deemed to be in default in the performance of any obligation on such parties' part to be performed under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by Unavoidable Delays; provided, that within fifteen (15) days after the commencement of such Unavoidable Delay, the non performing party shall notify the other party in writing of the existence and nature of any such Unavoidable Delay and the steps, if any, which the non-performing party shall have taken or planned to take to eliminate such Unavoidable Delay. Thereafter, the non-performing party shall, from time to time, on written request of the other party, keep the other party fully informed, in writing, of further developments concerning such Unavoidable Delay and the effort being made by the non-performing party to perform such obligation as to which it is in default. All provisions of any construction schedule shall be adjusted in accordance with such Unavoidable Delay.

SECTION XVI.
Notices

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

If to the County:	County Judge/Executive 2950 Washington Street Burlington, Kentucky 41005
With a Copy to:	County Attorney P.O. Box 900 2950 Washington Street Burlington, Kentucky 41005
If to the Agency:	Finance Department of the County 2950 Washington Street Burlington, Kentucky 41005
If to the Developer:	9541 US 42 LLC 4010 North Bend Road, Suite 301 Cincinnati, Ohio 45211 Attn: Thomas J. Ackermann
	With Copy to: Keating Muething & Klekamp PLL One East 4 th Street, Suite 1400 Cincinnati, Ohio 45202 Attn: James E. Parsons

SECTION XVII.
Approvals

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

SECTION XVIII.
Entirety of Agreement

As used herein, the term "Agreement" shall mean this Local Participation Agreement and the Exhibits attached hereto. This Agreement embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements, and understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party which has not been embodied in this Agreement, and no party shall be bound by or be liable for any alleged representation, promise, inducement, or statement of intention not so set forth. This Agreement may be amended, modified, superseded, or cancelled only by a written instrument signed by all of the parties hereto, and any of the terms, provisions, and conditions hereof may be waived only by a written instrument signed by the waiving party. Failure of any party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of any such provision by any part.

SECTION XIX.
Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided that any assignment by the Developer of the rights under this Agreement to a third-party purchaser of the Project shall require the consent of the County, which consent shall not be unreasonably withheld, but no consent shall be required by the County of an assignment of the rights and benefits of this Agreement by the Developer to an entity or entities created by and/or controlled by the Developer.

SECTION XX.
Headings and Index

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

SECTION XXI.
Exhibits

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

SECTION XXII.
No Waiver

No waiver of any condition or covenant of this Agreement to be satisfied or performed by the County, Agency or Developer shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of any party, except a written waiver signed by such party,

shall be construed to be a waiver of any condition or covenant to be performed by the other party.

SECTION XXIII.
Construction

No provisions of this Agreement shall be construed against a party by reason of such party having drafted such provisions.

SECTION XXIV.
Multiple Counterparts

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

SECTION XXV.
Relationship of the Parties

Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association among any of the Parties of this Agreement.

SECTION XXVI.
No Third Party Beneficiary

Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the Parties and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

SECTION XXVII.
Diligent Performance

With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of the performance thereof. Notwithstanding the above, time is of the essence with respect to any time limit specified herein.

(Signature Pages Follow)

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

COUNTY OF BOONE, KENTUCKY

By: Gary W. Moore
Gary W. Moore
County Judge/Executive

FINANCE DEPARTMENT OF THE COUNTY OF
BOONE, KENTUCKY, Acting by and through
Gary W. Moore, County Judge/Executive

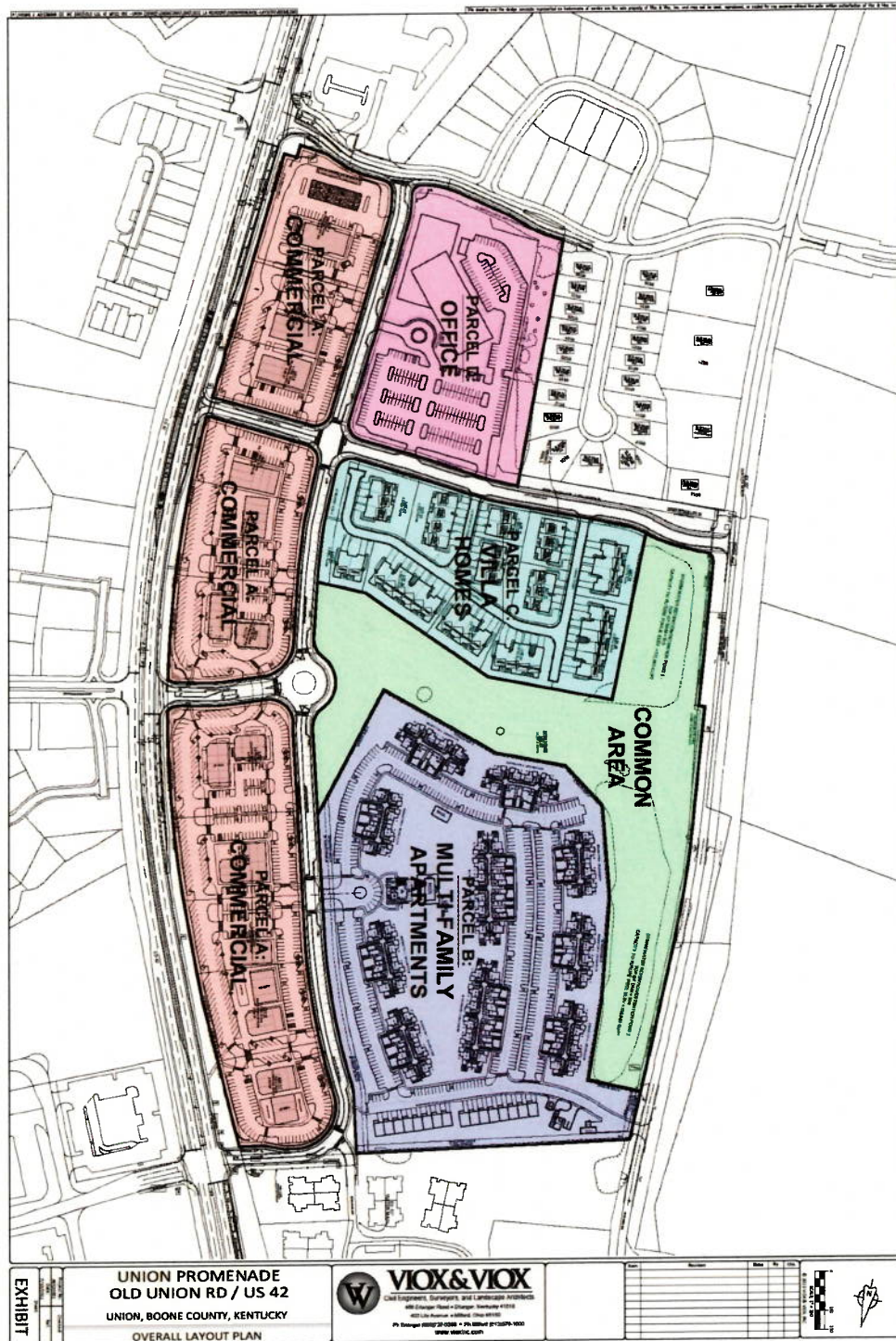
By: Gary W. Moore
Gary W. Moore
County Judge/Executive

9541 US 42 LLC, an Ohio
limited liability company

By: _____
Thomas J. Ackermann

Its: _____

Exhibit A: The Development Area Map



LEGAL DESCRIPTION

PARCEL A

PIDN Number - 063.00-00-003.00

Group Number - 2047

Located in Boone County, Kentucky, lying on the east side of Old Union Road, 0.70 miles north of Mt. Zion Road and is more particularly described as follows:

Unless otherwise stated, any monument referred to herein as an iron pin (set) is a 1/2 inch diameter rebar eighteen inches in length with a plastic cap stamped "PLS 3357". All bearings referred to herein are based upon the Kentucky State Plane Coordinate System, North Zone, North American Datum of 1983.

Beginning at a post (existing) in the east right-of-way line of Old Union Road 30.00 feet as measured perpendicular to the centerline at the most southwesterly common corner of Charles P. Collett (Deed Book 186, Page 858) and The Drees Company (Deed Book 894, Page 922); thence with said right-of-way line N 00-15-51 E 120.93 feet to a point; thence with a curve to the left, said curve having a radius of 5239.27 feet, a chord bearing and distance of N 03-51-12 W 752.37 feet to an arc distance of 753.02 feet to a point; thence N 07-58-15 W 94.15 feet to an iron pin (set) at the common corner of Collett and Rosella Verhoeven (Deed Book 183, Page 235); thence with the common line of Collect and Verhoeven N 84-26-08 E 147.93 feet to an iron pin (set); thence N 85-03-23 E 10.20 feet to an existing iron pipe; thence N 07-55-55 W 85.02 feet to an iron pin (set) in the south line of Robert Smith (Deed Book 634, Page 145); thence with common line Collett and Smith N 84-26-08 E 1172.26 feet to an iron pin (set) in the west right-of-way line of U.S. Highway 42, 65.62 feet as measured perpendicular to the centerline; thence with said right-of-way line and a curve turning to the right with an arc length of 86.16 feet, a radius of 2887.14 feet, a chord bearing of S 00°22'41" E and a chord length of 86.16 feet to a point; thence S 00-28-35 W 615.07 feet to an iron pin (set); thence N 89-31-25 W 32.81 feet to an iron pin (set); thence S 00-28-35 W 31.16 feet to a right-of-way marker (existing) at the common corner of Collett and The Drees Company (Deed Book 872, Page 826); thence leaving right-of-way line with common line of Collett and The Drees Company N 88-26-04 W 131.26 feet to an iron pin (existing); thence N 88-11-09 W 107.66 feet to an iron pin (existing); thence S 86-50-31 W 52.87 feet to an iron pin (existing); thence S 23-17-11 W 545.28 feet to an iron pin (existing); thence N 80-50-55 W 348.75 feet to an existing post; thence S 89-16-41 W 360.27 feet to the point of beginning containing 27.989 acres and being subject to all easements and rights-of-way of record.

This description was prepared from a new survey made by Gregory A. Larison, P.L.S. 3357, for Viox & Viox, Inc., May 2006.

LESS AND EXCEPT THE FOLLOWING:

Located in Boone County, Kentucky, lying on the east side of Old Union Road, 0.70 miles north of Mt Zion Road and is more particularly described as follows:

Unless otherwise stated, any monument referred to herein as an iron pin (set) is a 1/2 inch diameter rebar eighteen inches in length with a plastic cap stamped "PLS 3357". All bearings referred to herein are based upon the Kentucky State Plane Coordinate System, North Zone, North American Datum of 1983.

Beginning at an iron pin (existing) on the easterly right-of-way line of Old Union Road and at the most northwesterly common corner of Florence Christian Church, Inc. (Deed Book 917, Page 441) and Rosella Verhoven (Deed Book 183, Page 235); thence leaving the right-of way line of Old Union Road with a common line with Rosella Verhoven N 84°26'08" E 147.93 feet to an iron pin (existing) at the common corner with Florence Christian Church, Inc. and Rosella Verhoven (Deed Book 183, Page 235 and Deed Book 917, Page 445); thence with a common line with Florence Christian Church, Inc. and Rosella Verhoven (Deed Book 917, Page 445) N 85°03'23" E 10.20 feet to an iron pipe (existing); thence N 07°55'55" W 85.02 feet to an iron pin (existing) in a common line with Robert Smith (Deed Book 634, Page 145); thence with a common line with Florence Christian Church, Inc. and Robert Smith N 84°26'08" E 364.10 feet to an iron pin (set); thence with a new division line S 05°47'19" E 635.39 feet to an iron pin (set); thence S 81°46'22" E 282.13 feet to an iron pin (set); thence with a curve to the left having an arc length of 98.69 feet, a radius of 248.80 feet, and a chord bearing and distance of N 86°51'50" E 98.04 feet to an iron pin (set); thence N 75°30'02" E 11.15 feet to an iron pin (set); thence with a curve to the right having an arc length of 19.15 feet, a radius of 377.52 feet, and a chord bearing and distance of N 76°57'15" E 19.15 feet to an iron pin (set) at the common corner with Florence Christian Church, Inc. and The Drees Company (Deed Book 872, Page 826); thence with a common line with Florence Christian Church, Inc. and The Drees Company S 23°17'11" W 533.95 feet to an iron pin (existing) in a common line with The Drees Company (Deed Book 894, Page 922), thence with a common line with Florence Christian Church, Inc. and The Drees Company N 80°50'55" W 348.75 feet to a corner post (existing); thence S 89°16'41" W 360.27 feet to a corner post (existing) on the easterly right-of-way line of Old Union Road; thence with the right-of-way line of Old Union Road N 00°15'51" E 120.93 feet to a point; thence with a curve to the left having an arc length of 753.02 feet a radius of 5239.27 feet, and a chord bearing and distance of N 03°51'12" W 752.37 feet to a point; thence N 07°58'15" W 94.15 feet to the point of beginning containing 15.729 acres and being subject to all easements and rights-of-way.

This description was prepared from a new survey made by Gregory A. Larison, P.L.S. 3357, August 2006.

PARCEL B

Legal description of approximately 37.179 acres

P1DN No. 063.00-00-002.00/Group No. 2047:

BEGINNING at a corner of Richard Smith's 39.7 acre lot on Fowlers fork of Gunpowder Creek; thence with a line of said lot passing a stone at 22-1/2 feet N 74 E 19.77 chains to a stone in a line of George Smith; thence with his lines, S 31-3/4 E 1.5 chains to a stone; thence N 75 E 14.4 chains to a stone; thence with a line of said George Smith and James A. Huey, S 2-3/4 W 20.99 chains to a stone a corner with Richard O. Smith's 20 acre lot; thence with a line of said lot, S 83-3/4 W 29.12 chains passing a stone on the side of the center of Union-Florence Turnpike; thence with Turnpike, N 8-1/4 W 10 links, N 12 W 11.32 chains to a point in said Turnpike; thence N 85-1/2 W 81 links to a point in said Creek; thence down the creek N 6-1/4 W 5.008 chains to the BEGINNING, containing 59.7 acres.

SAVE AND EXCEPT the following;

Being a tract of land lying in Boone County along US 42 approximately 1.2 kilometers (0.7 mile) north of the intersection of US 42 and Mt. Zion Road, and more particularly described as follows:

Beginning at a point in the south property line 20.000 meters (65.62 feet) right of Proposed US 42 station 13+334.795; thence with the south property line S 84 degrees 40 minutes 45 seconds W, 40.097 meters (131.55 feet) to a point in the proposed access control and right of way line 20.000 meters (65.62 feet) left of Proposed US 42 station 13+332.007; thence with the proposed access control and right of way line 203.371 meters (667.23 feet) along an arc to the left, having a radius of 880.000 meters (2887.14 feet), the chord of which is N 7 degrees 51 minutes 55 seconds W, 202.919 meters (665.74 feet) to a point in the proposed right of way line 20.000 meters (65.62 feet) left of Proposed US 42 station 13+540.000; thence with the proposed right of way line 19.556 meters (64.16 feet) along an arc to the left, having a radius of 880.00 meters (2887.14 feet), the chord of which is N 15 degrees 07 minutes 21 seconds W, 19.555 meters (64.16 feet) to a point in the proposed access control and right of way line 20.000 meters (65.62 feet) left of Proposed US 42 station 13+560.000; thence with the proposed access control and right of way line 170.516 meters (559.43 feet) along an arc to the left, having a radius of 880.000 meters (2887.14 feet), the chord of which is N. 21 degrees 18 minutes 37 seconds W. 170.249 meters (558.56 feet) to a point in the proposed access control and right of way line 20.000 meters (65.62 feet) left of Proposed US 42 station 13+734.391; thence with the proposed access control and right of way line N 26 degrees 51 minutes 41 seconds W. 11.584 meters (38.00 feet) to a point in the north property line 20.000 meters (65.62 feet) left of Proposed US 42 station 13+745.975; thence with the north property line N 75 degrees 00 minutes 37 seconds E. 3.155 meters (10.35 feet) to a point in the north property line 16.912 meters (55.49 feet) left of Proposed US 42 station 13+745.325; thence with the north property line S 30 degrees 53 minutes 57 seconds E, 29.538 meters (96.91 feet) to a point in the north property line 14.638 meters (48.03 feet) left of Proposed US 42 station 13+715.553; thence with the north property line N 74 degrees 35 minutes 03 seconds E, 35.178 meters (115.41 feet) to a point in the proposed access control and right of way line 20.000 meters (65.62 feet) right of Proposed US 42 station 13+709.431; thence with the proposed access control and right of way line 152.752 meters

(501.15 feet) along an arc to the right, having a radius of 920.000 meters (3018.37 feet), the chord of which is S 20 degrees 30 minutes 57 seconds E. 152.577 meters (500.58 feet) to a point in the proposed right of way line 20.000 meters (65.62 feet) right of Proposed US 42 station 13+560.000; thence with the proposed right of way line 20.444 meters (67.07 feet) along an arc to the right, having a radius of 920.000 meters (3018.37 feet), the chord of which is S 15 degrees 07 minutes 21 seconds E, 20.444 meters (67.07 feet) to a point in the proposed access control and right of way line 20.000 meters (65.62 feet) right of Proposed US 42 station 13+540.000; thence with the proposed access control and right of way line 209.765 meters (688.21 feet) along an arc to the right, having a radius of 920.000 meters (3018.37 feet), the chord of which is S 7 degrees 57 minutes 15 seconds E, 209.311 meters (686.72 feet) to the point of beginning.

The above described parcel contains 15,300 square meters (3.781 acres)

FOR INFORMATIONAL PURPOSES, ONLY: Being the same property conveyed to the Commonwealth of Kentucky, for the use and benefit of the Transportation Cabinet, Department of Highways by Deed of Conveyance recorded February 8, 2002 in Deed Book 821, Page 584, Boone County, Kentucky Records.

SAVE AND EXCEPT the following:

Being located in the City of Union, Boone County, Kentucky and lying east of the proposed Relocated U.S. 42, west of Seltman, D.B. 702, pg. 280, north of Collett, D.B. 181, pg. 537, and the Kopser Family Limited Partnership, D.B. 677, pg. 180 and being more particularly described as follows:

Beginning at a set iron pin and cap at the intersection of the Seltman and the proposed east line of proposed Relocated U.S. 42; thence with said east line of proposed Relocated U.S. 42 along a curve to the right 1255.99 feet, (R=3018.37 feet, Chord S 13°20'13" E, 1246.95 feet) to a set iron pin and cap on the north line of Collett (D.B. 181, pg. 537); thence with the line N 84°24'27" E, 295.58 feet to a set point on the common corner of Collett and Kopser Family Limited Partnership, D.B. 677, pg. 180; thence with Kopser Family Limited Partnership N 84°26'41" E, 134.54 feet to a set iron pin and cap; thence N. 06°07'22" E, 46.31 feet to a set iron pin and cap at the common corner of Kopser and Seltman, D.B. 702, pg. 280; thence with said Seltman N 03°40'52" E, 1340.04 feet to a set iron pin and cap; thence continuing with Seltman S 75°17'12" W, 834.04 feet to the point of beginning and containing 17.47 acres.

FOR INFORMATIONAL PURPOSES, ONLY: Being the same property conveyed to Arlinghaus Builders, Inc., a Kentucky corporation, by Deed recorded February 9, 2008 in Deed Book 775, Page 119, Boone County, Kentucky Records.

As the result of a field survey conducted by Viox & Viox by Gregory A. Larison (P.L.S. 3357), the above-described property is also described as follows:

Located in Boone County, Kentucky, lying on the west side of U.S. Highway 42, and the east and west sides of Old Union Road approximately 800 feet south of Clarkston Lane and being all of the remaining property conveyed to the Robert Huey Smith Family Limited Partnership, by

deed recorded in Deed Book 634, Page 145, in the office of the Boone County Clerk at Burlington, Kentucky and is more particularly described as follows:

Unless otherwise stated, any monument referred to herein as an iron pin (set) is a 5/8 inch diameter rebar twenty four inches in length with a plastic cap stamped "LARISON PLS 3357." All bearings referred to herein are based upon the Kentucky State Plane Coordinate System, North Zone, NAD 83 (2011).

Beginning at an iron pin (set) in the west right-of-way line of U.S. Highway 42, 65.62 feet as measured perpendicular to the centerline, at the common corner of the Robert Huey Smith Family Limited Partnership and Anthony W. and Candace P. Frohlich, (Deed Book 356, Page 119);

Thence with said right-of-way line for the following two (2) courses:

1. S 26°51'53" E a distance of 38.00 feet to an existing concrete right-of-way marker;
2. With a curve turning to the right with an arc length of 1291.51 feet, a radius of 2887.13 feet, a chord bearing of S 14°02'59" E, and a chord length of 1280.77 feet to an existing iron pin and plastic cap stamped "PLS 3357" at the common corner of the Robert Huey Smith Family Limited Partnership and The Florence Christian Church (Deed Book 917, Page 441);

Thence with the common line of the Robert Huey Smith Family Limited Partnership, Florence Christian Church, Harmony Place Subdivision, Section 2 (Plat Cabinet 5, Slide 694) and James A. Marshall (Deed Book 1097, Page 310) S 84° 26'08" W, passing an iron pin with plastic cap stamped "Witness PLS 3357" at 1331.89 feet a total distance of 1360.51 feet to a point in the center of Old Union Road;

Thence with said centerline for the following three (3) courses:

1. N 10°32'53" W a distance of 207.49 feet to a point;
2. N 10°31'58" W a distance of 277.27 feet to a point;
3. N 10°28'56" W a distance of 268.31 feet to a point;

Thence leaving said centerline N 84°25'36" W, passing an iron pin and cap (set) a distance of 31.23 feet, a distance of 67.43 feet to a point at the common corner of the Robert Huey Smith Family Limited Partnership and Rick Newman (Deed Book 930, Page 10 and Deed Book 930, Page 14);

Thence with the common line of the Robert Huey Smith Family Limited Partnership and Rick Newman N 03°25'36" W a distance of 326.72 feet to an iron pin (set) at the common corner of the Robert Huey Smith Family Limited Partnership and Don Goderwis, Jr. (Deed Book 919, Page 986);

Thence with the common line of the Robert Huey Smith Family Limited Partnership, Don Goderwis, Jr. and Frohlich N 74°59'27" E, passing an iron pin (set) at 9.05 feet and 70.19 feet, a total distance of 1294.28 feet to the point of beginning containing 37.179 acres exclusive of the right-of-way of Old Union Road.

This description was prepared from a new survey made by Gregory A. Larison, PLS 3357, for Viox & Viox, Inc., December 21, 2020.

FOR INFORMATIONAL PURPOSES, ONLY: Being the same property conveyed to Robert Huey Smith Family Limited Partnership, a Kentucky limited partnership, by Deed recorded December 27, 1996 in Deed Book 634, Page 145, Boone County, Kentucky Records.

PARCEL C

TRACT I: Parcel No. 051.00-00-047.02: (Fee Simple)

Situated in Boone County, Kentucky and lying on the South side of U.S. 42 and being part of 32.8621 acres owned by Wilbur and Lucille Houston, found on record in Deed Book 122, Page 39, Group 2047 of the Boone County Records at Burlington, Kentucky, and is described as follows:

Beginning at a point in the right-of-way of U.S. 42 and corner with Robert and Jeanette Smith, Deed Book 325, Page 139; thence along said right-of-way N 4°33' W 523.88' to a steel pipe and corner with the 10.0589 acre tract, thence N 70°22'54" E 978.32' to a steel pin, thence S 31°24' E 598.31' to the southeast corner of the parent tract, thence S 74°04'32" W 1239.25' to the point of beginning containing 13.8828 acres.

Description prepared by A.J. Williamson, R.L.S. No. 1008 from a Survey made by Tarry Hughes, R.L.S. No. 820.

LESS AND EXCEPT the parcel (Parcel No. 35 - Tract A) conveyed to the Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet, Department of Highways by deed recorded in HD Book 19, Page 48, Boone County, Kentucky Records.

As the result of a field survey conducted by Viox & Viox by Gregory A. Larison (P.L.S. 3357), the above-described property is also described as follows:

Located in Boone County, Kentucky, lying on the west side of U.S. Highway 42, and the east side of Old Union Road approximately 300 feet south of Clarkston Lane and being all of the remaining property conveyed to Anthony W. Frohlich and Candace P. Frohlich by deed recorded in Deed Book 356, Page 119, in the office of the Boone County Clerk Burlington, Kentucky and is more particularly described as follows:

Unless otherwise stated, any monument referred to herein as an iron pin (set) is a 5/8 inch diameter rebar twenty four inches in length with plastic cap stamped "LARISON PLS 3357." All bearings referred to herein are based upon the Kentucky State Plane Coordinate System, North Zone, NAD 83 (2011).

Beginning at an iron pin (set) in the east right-of-way line of Old Union Road, 30.00 feet as measured perpendicular to the centerline, at the common corner of Frohlich and the Robert Huey Smith Family Limited Partnership (Deed Book 634, Page 145);

Thence with said right-of-way line N 03°38'03" W a distance of 514.81 feet to an iron pin and cap stamped "LARISON PLS 3357" (set) at the common corner of Frohlich and The Villas of Fowler's Creek Condominium Phase One (Plat Cabinet 5, Slide 404);

Thence with the common line of Frohlich and The Villas of Fowler's Creek Condominium Phase One N 71°17'51" E a distance of 978.32 feet to MAG nail (set) in the west right-of-way line of U.S. Highway 42;

Thence with said right-of-way line for the following two (2) courses:

1. S 30°25'54" E a distance of 426.09 feet to an existing concrete right-of-way monument;
2. S 26°51'53" E a distance of 160.40 feet to an iron pin and cap stamped "LARISON PLS 3357" at the common corner of Frohlich and the Robert Huey Smith Family Limited Partnership;

Thence with the common line of Frohlich and the Robert Huey Smith Family Limited Partnership S 74°59'27" W a distance of 1224.09 feet to the point of beginning containing 13.608 acres.

This description was prepared from a new survey made by Gregory A. Larison, PLS 3357, for Viox & Viox, Inc., December 15, 2020.

FOR INFORMATIONAL PURPOSES, ONLY: Being the same property conveyed to Anthony W. Frohlich and Candice P. Frohlich, husband and wife, by Lucille B. Houston, dated November 18, 1986 and recorded November 21, 1986 in Deed Book 356, Page 119, Boone County, Kentucky Records.

TRACT II (Easement)

TOGETHER WITH easements as set forth in Reciprocal Easement Agreement by and between Villas of Fowler's Creek, LLC, a Kentucky limited liability company and Anthony W. Frohlich and Candace P. Frohlich, husband and wife, dated March 7, 2006 and recorded April 17, 2007 in EA Book 71, Page 450 and in Plat recorded in Cab 5, Slide 404, Boone County, Kentucky Records.

The Development Area shall also include the public rights-of-way adjacent to the property described above to the extent improvements are needed within the adjacent public rights-of-way related to the construction of the Project.

Exhibit B: Public Infrastructure Costs

UNION PROMENADE PUBLIC INFRASTRUCTURE COSTS	
ITEM	COST
Site Demolition	\$ 63,700.00
Storm Sewer	1,869,311.38
Sanitary Sewer	974,298.28
Site Modifications	2,419,070.00
Site Work	2,233,865.52
Water Service	1,116,894.57
Paving and Curbs	1,541,412.00
Sidewalks	553,875.00
Crosswalks (Speed Calming Special Finish & Color Application)	77,500.00
Street Lights	369,250.00
Street Signs	56,250.00
Street Trees	151,656.25
Traffic Signals: 2 New (\$700,000) and 1 Modified (\$125,000)	825,000.00
Gas Service	250,000.00
Electric Service	750,000.00
Public Items: Benches, Trash Cans, etc.	75,000.00
Land Planning & Public Approval Process	82,500.00
Stream Mitigation for RoW (Army Corp of Engineers)	356,000.00
Environmental Engineering	75,000.00
Construction Insurance	66,000.00
Bond Insurance	40,000.00
Civil Engineering & Surveying (8% of related Infrastructure Costs)	1,066,166.64
Geotechnical (3.5% of related Infrastructure Costs)	377,034.94
On Site Project Supervision	80,960.00
Project Management & Overhead (10% of all Costs)	1,538,978.46
Land Acquisition for Dedicated Right-of-Way	894,082.00
Contingency (10% of all Costs)	1,332,708.30
TOTAL:	\$19,236,513.33

Development Plan

Development Plan
For
Union Promenade Development Area

County of Boone, Kentucky

October 1, 2022

**DEVELOPMENT PLAN
UNION Promenade DEVELOPMENT AREA**

1. Introduction.

1.1. Purpose. The County of Boone, Kentucky (the "County") intends to establish the Union Promenade Development Area (the "Development Area") pursuant to the provisions of KRS 65.7041 to 65.7083, as the same may be hereafter amended (collectively, the "Act"), as a tool to encourage the development of the Union Promenade Project, a mixed-use commercial and residential development, with estimated capital investment exceeding \$170 Million (the "Project"), located along U.S. 42 in the City of Union, Kentucky. The County plans to support the development of the Development Area by reimbursing certain infrastructure costs related to the construction of the Project.

1.2. Size and Location. The Development Area is an approximate 62 acre area site located in the City of Union, Kentucky, identified more specifically on the map attached as Exhibit "A" (also referred to herein as the "Project Site"). Attached as Exhibit B are a listing of parcels within the Development Area, and includes the calendar year 2021 taxable assessments for the parcels.

2. The Development Area.

2.1. General Description of the Development Area. The Development Area consists of approximately 62 acres, and includes mostly undeveloped land with a few residential structures.

2.2. Assurances Regarding the Size and Taxable Assessed Value of the Development Area and Other Matters. The County finds in accordance with the Act that:

(a) The Development Area is a contiguous area consisting of approximately 62 acres, which is less than a three square mile area;

(b) The establishment of the Development Area will not cause the assessed taxable value of real property within the Development Area within all "development areas" and "local development areas" established by the County (as those terms are defined in the Act) to exceed twenty percent (20%) of the total assessed taxable value of real property within the County. The assessed value of taxable real property within the Development Area for calendar year 2021 is \$407,200. While the County has established several other local development areas, the total taxable assessment of the County exceeds \$14 Billion. The total taxable real property value of the Development Area, when combined with the taxable real property value of the other local development areas established by the County, will only represent a small percentage of the County's taxable real property value ; and

(c) The Development Area constitutes substantially undeveloped land, but qualifies as a "development area" under the Act pursuant to the provisions of KRS 65.7043(2)(a)(1)(b)(iv).

2.3. Statement of Conditions and Findings Regarding the Development Area. Normally Development Area are for the development of previously developed land that meet certain blight factors as set forth in KRS 65.7049(3), except for Projects that may meet one of the exceptions set forth in KRS 65.7043(2)(a)(1)(b).

The County has reviewed the Project and finds that the Development Area qualifies as a "development area" under the Act pursuant to the provisions of KRS 65.7043(2)(a)(1)(b)(iv), as follows:

(a) The Project being a mixed-use commercial and residential project meets the definition of a "Mixed-Use Project" as set for in KRS 154.30-060, and will include a combination of residential, office, retail and restaurant uses;

(b) The Development Area is located within an area that is under a federal storm water and sanitary sewer consent decree, pursuant to the provisions of the case of The Commonwealth of Kentucky, et al. vs. Sanitation District No. 1 of Northern Kentucky, Amended Consent Decree Case No. 2:05-CV-199-(WOB) (the "Consent Decree");

(c) The construction of the Project will involve significant storm sewer and sanitary improvement to comply with the requirements of the Consent Decree. An existing Sanitation District No. 1 ("SD1") sanitary sewer will be relocated as part of the Project. In addition, new public sanitary sewer will be constructed and includes 12 inch diameter, 8 inch diameter, and 6 inch diameter gravity mains. The public portions of sanitary sewers will be constructed per SD1 and Kentucky Division of Water ("KDOW") regulations and will be within proposed public street rights-of ways or easements to be granted to SD1. Sanitary sewer flows will be part of the SD1 sewer system along the Fowler Fork of the Gunpowder Creek, Gunpowder Creek, and ultimately to the Western Regional Wastewater Treatment Plant, WWTP). In addition, several existing Kentucky Transportation Cabinet ("KYTC") storm sewers, from US 42, will be extended through the Project site to allow for grading and the construction of the proposed public

roadways. Storm sewers will also be constructed along the proposed public streets. These proposed public storm sewers will be constructed per SD1 regulations, and in compliance with the Consent Decree and will become part of the SD1 and City's system. SD1 has authority over public storm sewers, detention, and water quality requirements for the Northern Kentucky region. As part of this Project public storm sewers and two regional detention ponds/lakes will be constructed. The storm sewers will be constructed per SD1 regulations. These public storm sewers will be constructed in public rights-of-ways or in easements to be dedicated to SD1. The direct cost of the sanitary sewer improvements, storm sewer improvements, and storm sewer detention, not including necessary site modifications, are estimated to be \$2,955,909. When considering the land costs for the sanitary, storm sewers and storm detention to be dedicated to the public, and the design and other soft costs, the total cost of the sanitary and storm sewer improvements will exceed \$4,000,000. The sanitary and storm sewer improvements will be completed in accordance with the plans and specifications approved by SD1 and will be in furtherance of any Federal Consent Decree requirements.

2.4. Assurances the Development Area Is Not Reasonably Expected to Develop Without Public Assistance. The County finds the Development Area is not reasonably expected be successful financially without public assistance including, but not limited to, assistance available under the Act, and from the proceeds of Industrial Revenue Bonds issued by the City of Union, Kentucky (the "City") referenced below, which the County participated through the pledge of a portion of the County's real property taxes generated from the Project through the execution of an

Agreement In Lieu of Taxes. The total site development and infrastructure costs, exclusive of land acquisition, to construct the Project exceeds \$20 Million. Project financing is not feasible without incentives, including, but not limited to, incentives under the Act to cover in-part the site development and infrastructure costs that are needed for the construction of the Project. As part of the approval the issued Industrial Revenue Bonds pursuant to KRS Chapter 103, that generated \$10,501,823.13 in net construction funds (the "IRB Incentives") to pay for public infrastructure costs for the Project, the Developer engaged the Catalytic Funding Corp. of Northern Kentucky (the "Catalytic Fund") to study the Project's finances and the need for incentives. The study prepared by the Catalytic Fund, a summary of which is attached as Exhibit D, showed that without incentives the Project had a funding gap of \$19.9 Million. While the incentives won't cover all of that funding gap, combined TIF and IRB Incentives to the Project will allow for a rate of return to the Developer of under ten percent (10%), which makes the Project viable. The Catalytic Fund study noted that normally developers would expect to receive a much higher return for similar projects.

2.5. Assurances the Public Benefits of Redeveloping the Development Area as Proposed Justify the Public Costs Proposed. The County finds that the public benefits of developing the Development Area justify the public costs involved. It is estimated that providing incentives through the establishment of the Development Area combined with other incentives available has the potential of increasing new investment within the Development Area by over \$170 Million, and is estimate to create 654 new jobs with an estimated gross payroll of \$29,396,000. The resulting economic impact from the Project will more than offset the incentives

recommended through the establishment of the Development Area. In addition, the new capital investment and jobs will encourage new residential and commercial development outside of the Development Area to support the job growth. While this Development Plan recommends the County commit a portion of the incremental increase in payroll occupational taxes to pay for redevelopment assistance within the Development Area, the pledge will not impact any regular occupational taxes the County will collect from the Project. The establishment of the Development Area will not impact any County tax revenues that will otherwise be generated within the Development Area. The Project will generate other taxes to the County and other taxing districts, including real property taxes, tangible property taxes, etc., which will not be impacted by any pledge of incremental revenues through the establishment by the County of the Development Area.

2.6. Assurances Regarding the Area Immediately Surrounding the Development Area. The County finds that the area immediately surrounding the Development Area has been subject to growth and development through investment by private enterprise, but that the extreme cost of site development and infrastructure costs needed for the Project justifies the pledge of tax increment from the County to support the Project.

2.7. Development Area Description. The Development Area includes the real property within the boundaries described on the map on Exhibit "A" and parcel listing attached hereto as Exhibit "B".

2.8. Existing Uses and Conditions. The Development Area consists of mostly undeveloped land with a few residential structures.

2.9. Changes in the Zoning Ordinance, Zoning Map, Comprehensive Plan or Other Codes or Plans Necessary to Implement the Development Plan. The plans for the Project have been approved by the Boone County Planning Commission and the City, and therefore no additional changes are necessary in the zoning map or comprehensive plan applicable to the Development Area.

2.10. Certification of Compliance with the Comprehensive Land-Use Plan. Since the concept plan for the Project has been approved as noted in Section 2.8 above, the Project and the plans for the Development Area are in compliance with the Comprehensive Land-Use Plan.

3. The Development Program. The plan for Development Plan is the construction of the Project with an estimated capital investment of \$170 Million as follows:

3.1. The Project includes the acquisition of approximately sixty-two (62) acres of real property located within the City and the following elements:

(a) Installation, construction, and equipping of improvements to a portion of the Project Site consisting of ten (10) commercial lots fronting U.S. Route 42 the estimated cost of which is approximately \$58,450,000;

(b) Installation, construction, and equipping of improvements to a portion of the Project Site consisting of 60,000 square feet of medical office/professional buildings the estimated cost of which is approximately \$24,150,000;

(c) Installation, construction, and equipping of improvements to a portion of the Project Site consisting of approximately 300 market-rate apartment units the estimated cost of which is approximately \$58,500,000;

(d) Installation, construction, and equipping of improvements to a portion of the Project Site consisting of approximately fifty (50) for-sale villas (patio homes) the estimated cost of which is approximately \$20,800,000; and

(e) Installation and construction of related infrastructure, including, but not limited to, streets, utilities, storm sewer and sanitary sewer facilities, street lighting, parking and related site amenities necessary to support the Project.

4. Redevelopment Assistance and Finance Plan.

The County proposes to provide redevelopment assistance through a pledge of County incremental revenues from occupational taxes from the special occupational tax rate on the gross wages from new employees generated by the Project, authorized by KRS 65.7056 (the "Job Assessment Fee"). The County will pledge one hundred percent (100%) of its incremental tax revenues occupational taxes from the Project for a 30-year period from the Job Assessment Fee, after deducting the occupational payroll tax revenues the County receives from the Project from its general County payroll occupational tax rate to fund site development and infrastructure costs. The County recognizes that a portion of the infrastructure costs needed for the Project will be funded by the City through the issuances of tax exempt and/or taxable bonds, supported by Pilot Taxes that have been pledged to the Project (the "IRBs"). The pledge of County incremental revenues will only be used to pay for or reimburse the site development and infrastructure costs that are not paid for from the proceeds of the IRBs.

The County will establish a special fund for the deposit of pledged incremental revenues. Pledged incremental revenues deposited into this special fund will be used solely to pay debt service and costs of issuance on increment bonds, including "financing costs" (as defined by the Act) issued by the County to finance the redevelopment assistance or, if increment bonds are not issued, to pay directly for such redevelopment assistance in compliance with this Development Plan, the Act, and all agreements and documents entered into in connection therewith. The County will enact an ordinance establishing the Development Area and adopting this Development Plan. The development ordinance will designate the Finance Department of the County, as the "Agency" to oversee, administer and implement the development area ordinance.