

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT is made and entered into as of the ___ day of May, 2026 (the “*Effective Date*”) by and between Turner Management, LLC, a Kentucky limited liability company, having an address of 1002 Five Arrows Lane, Nicholasville, KY 40356 (hereinafter referred to as “*Developer*”), and the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban-county government pursuant to KRS Chapter 67A, located at 200 East Main Street, Lexington, KY 40507 (hereinafter referred to as “*LFUCG*”), individually a “*Party*” and collectively referred to as the “*Parties.*”

RECITALS

WHEREAS, LFUCG owns and operates a system of sanitary sewage collection and treatment for the benefit of its residents and taxpayers; and

WHEREAS, Developer is developing a residential project on the parcel identified as 5447 Tates Creek Road, Lexington, Kentucky, 40515, being PVA Parcel No. 25409900 (“*Property*”), and of record in Deed Book 4022, Page 75 in the office of the Fayette County Clerk; and

WHEREAS, LFUCG has approved those certain plans and specifications attached hereto and incorporated herein by reference as Exhibit A (the “*Approved Plans*”); and

WHEREAS, the Developer is willing to construct, install, extend, and/or realign sanitary sewer improvements, including relocating the existing pump station located at 5397 Tates Creek Road, Lexington, Kentucky, 40515, to and onto the Property, pursuant to the Approved Plans (the “*Project*”); and

WHEREAS, the Parties agree that it is mutually advantageous for Developer, by and through its contractors and subcontractors, to perform and to complete the Project consistent with

the Approved Plans and coincident with the Developer's construction and development activity on the Property; and

WHEREAS, LFUCG has reviewed the Approved Plans for Project by Developer's contractors and subcontractors at the direction of Developer; and

WHEREAS, the Parties agreed that it is in the best interest of all involved that Developer's contractors and subcontractors perform the work for the Project using Approved Plans; and

WHEREAS, the Parties desire to authorize Developer, by and through its contractors and subcontractors, to perform and to complete the Project in accordance with the Approved Plans; and

WHEREAS, Developer and LFUCG have agreed to enter into a cost reimbursement arrangement whereby LFUCG and the Developer will divide costs for the construction and/or realignment of the sanitary sewer improvements including a pump station under the "Pump Station Total (shared cost between LFUCG and Developer)" as described in **Exhibit B** (the "*Cost Share Work*") (but excluding those items that are described as "Developer Cost Only" therein), with LFUCG responsible for 60% at Two Hundred Forty-Nine Thousand Dollars (\$249,000.00), and Developer responsible for 40% at One Hundred Sixty-Six Thousand Dollars (\$166,000.00), as depicted and described more particularly in the Approved Plans, and pursuant to which Developer shall provide a sanitary sewer and access easements for the portion of the new/realigned sanitary sewer improvements including a pump station on the Property at no additional cost to LFUCG.

NOW, THEREFORE, in consideration of the premises and the foregoing mutually agreed upon promises, conditions, and covenants hereinafter set forth, Developer and LFUCG covenant and agree as follows:

(1) **INCORPORATION OF RECITALS.** The above recitals are incorporated herein as if fully set forth.

(2) **REPRESENTATIONS OF DEVELOPER.** Developer represents that it has been duly organized under the laws of the Commonwealth of Kentucky and validly exists in good standing under the laws of the Commonwealth of Kentucky. Developer further represents that it has all requisite corporate power and authority to enter into and fully perform this Agreement. Developer further represents that it is the record owner of the Property and has the requisite authority and agency to enter into this Memorandum of Agreement. Developer's execution and delivery of this Memorandum of Agreement and performance of all duties and obligations contained herein have been duly authorized by all necessary corporate action on behalf of Developer and Owner and this Memorandum of Agreement is enforceable against Developer in accordance with its terms.

(3) **CONSTRUCTION OF SANITARY SEWER IMPROVEMENTS INCLUDING A PUMP STATION.** Developer shall bid, contract for, and cause to be prosecuted to completion, the construction and/or realignment of the Project on the Property, as depicted and described more particularly in the Approved Plans. Developer's construction contractors and subcontractors shall furnish all construction labor, equipment, and will use contractor supplied materials to construct and/or realign the Project as shown on the Approved Plans.

Developer agrees that the Project shall be constructed, inspected, and surety shall be provided in accordance with the requirements of the appropriate LFUCG Division of Engineering manuals for a new development project. The Project shall be constructed in a good, safe and workmanlike manner in compliance with all applicable codes, ordinances, laws and regulations. Developer shall take necessary action to protect the life, health, safety, and property of all

personnel on the job site, members of the public, and LFUCG personnel. Developer shall be responsible for obtaining all necessary permissions for the Project, specifically including all necessary authorizations to perform construction work in the public right-of-way. Developer further understands and agrees that encroachment permits shall be obtained for any portion of the work which encroaches on any right-of-way, sanitary sewer, drainage, utility, or other easements of record in the office of the Fayette County Clerk. Nothing herein is intended to operate as permission by LFUCG to close any public right-of-way, including Tates Creek, nor shall this Agreement be construed to waive the necessary approvals to temporarily close any public right-of-way, including Tates Creek, if necessary and appropriate, and Developer is responsible for securing such approvals as may be necessary or appropriate in order to complete the Project.

(4) **DESCRIPTION OF SANITARY SEWER IMPROVEMENTS INCLUDING A PUMP STATION TO BE CONSTRUCTED AND/OR REALIGNED BY DEVELOPER.**

Attached hereto and incorporated herein as **Exhibit A** is a description of the sanitary sewer improvements including a pump station to be constructed or realigned by the Developer, by and through its construction contractors and subcontractors, as agreed by the Parties. The scope of work under this Agreement is substantially as follows: Developer's contractors and subcontractors shall construct, install, extend, and/or realign sanitary sewer improvements, including relocating the existing pump station located at 5397 Tates Creek Road, Lexington, Kentucky, 40515, to and onto the Property, pursuant to the Approved Plans. Developer's construction, installation, extension, and/or realignment of the Project shall expressly include all testing and inspection required for acceptance of the sanitary sewer improvements by LFUCG, and in no event shall LFUCG reimburse Developer for the construction of said improvements until all required

inspection and testing has been conducted and LFUCG has agreed to accept the sanitary sewer improvements for public use pursuant to this Agreement.

The Project shall be dedicated to the public use as part of the sanitary sewer system of LFUCG and shall be located in LFUCG-owned right of way or in a dedicated permanent sanitary sewer easement showing the specific legal description of the location of such facilities. The dedication of a permanent sanitary sewer and access easements shall be in a form acceptable to LFUCG, by plat or deed of easement, as appropriate, and shall be provided at no cost to LFUCG. Developer agrees that LFUCG shall have the right to enter upon Developer's property to ensure that the sanitary sewer improvements are appropriately constructed pursuant to the applicable plans and specifications.

(5) **COST ESTIMATES AND REIMBURSEMENT.** Recognizing that the Project is mutually beneficial to both Developer and LFUCG, LFUCG and Developer agree to divide construction costs for the Cost Share Work, as defined above, associated with the Project and Approved Plans. **The total estimated amount of the Cost Share Work of the Project is FOUR HUNDRED FIFTEEN THOUSAND DOLLARS (\$415,000.00), as described in Exhibit B.** If the estimated cost changes for any reason, Developer shall provide immediate notice of any change orders affecting the estimated cost to LFUCG for LFUCG's approval.

A. **Developer's Costs.** Developer shall be solely responsible for the initial payment of all costs incurred which are associated with the Project. Developer shall be responsible for **40%** or **ONE HUNDRED SIXTY-SIX THOUSAND DOLLARS (\$166,000.00).**

B. **LFUCG Costs.** LFUCG shall be responsible for reimbursement of **60%** of the Cost Share Work, as defined above, associated with the Project and Approved Plans, and **Exhibit B** up to a maximum amount of **TWO HUNDRED FORTY-NINE THOUSAND DOLLARS**

(\$249,000.00). Subject to the maximum amount just before stated, LFUCG shall reimburse Developer for **60%** of the Cost Share Work, as defined above, associated with the Project and Approved Plans, such reimbursement made by a method agreed upon by the Parties. The final reimbursement amount shall be based on actual final costs of construction of the Project. Reimbursement shall be due in full upon acceptance of the project facilities by LFUCG, such acceptance not to be unreasonably withheld. In no event shall LFUCG be required to pay an amount in excess of **60%** the actual project cost, capped at an amount not to exceed **TWO HUNDRED FORTY-NINE THOUSAND DOLLARS (\$249,000.00)** as described in Exhibit B, except by written modification to this Agreement approved by both Parties and approval of a change order by the Urban County Council.

(6) **CONSTRUCTION APPROVALS; CHANGES IN THE WORK; CHANGE ORDERS.** Any and all work performed pursuant to this Agreement shall be approved by LFUCG's Division of Water Quality. Developer hereby agrees to submit any changes or modifications to LFUCG's Division of Water Quality for consideration and approval before the commencement of any work pursuant to those changes, modifications, or change orders.

LFUCG reserves the right in its sole discretion to demand that Developer and all construction contractors or subcontractors immediately cease any portion of, or all further work undertaken within the scope of work of the Project. Any authorized services performed, materials used or installed to the satisfaction of LFUCG before the demand to cease any and all further work shall be paid in accordance with the terms of this Agreement. LFUCG shall thereafter authorize Developer in writing to undertake only minimal, reasonable, and necessary additional work or services and acquire, expend, use, or install only minimal, reasonable, and necessary additional materials to re-establish the original use and function of the sanitary sewer improvements.

Developer shall notify LFUCG in writing, and obtain the approval of LFUCG, prior to any change orders to the construction plans for the site that will affect the costs of the Project.

(7) **COMMENCEMENT; COMPLETION DATE; DELAY.** This Agreement will commence on the Effective Date. Time is of the essence in the performance of this Agreement. The performance period may be extended for the following reasons: (1) if delay is caused by the acts or omissions of LFUCG, (2) in the event of changes ordered by LFUCG, or (3) in the event of unavoidable and unforeseen delays beyond Developer's reasonable control, which include *force majeure* events such as a war, riot, strike, acts of God, acts of the state or federal governmental that prohibit or impede Developer from performing its obligations under this Agreement or the unavailability of materials.

Notwithstanding the foregoing, if delays result solely by reason of the acts of Developer, its contractors, or subcontractors, Developer shall be solely responsible for any increased costs or penalties associated with such delays. Developer shall immediately notify LFUCG of any delay, regardless of cause, within five (5) business days and provide a written action plan regarding how it will attempt to resolve the delay, whenever Developer observes or otherwise becomes aware of any development that affects the scope or timing of the Project or the completion of the Project.

(8) **EROSION AND SEDIMENT CONTROL.** Developer shall ensure that all contractors and subcontractors utilized in the construction of the Project follow all applicable erosion and sediment control ordinances and storm water regulations. Plans shall be submitted to LFUCG for review and approval.

(9) **INSURANCE.** Developer shall require its contractors and subcontractors to procure and maintain insurance coverage and limits at levels approved by LFUCG at all times during the term of this Agreement. Developer shall provide at least thirty (30) days advance written

notice via certified mail, return receipt requested, in the event that any of the required insurance coverages are canceled, not renewed, or otherwise lapse.

(10) **HAZARDOUS SUBSTANCES.** Developer represents and warrants that its development of the Property and the construction and realignment of the Project will not generate or release any hazardous substance, and that Developer, its contractors, and subcontractors will not store or dispose on the Property nor transport to or over the property any hazardous substance in violation of any applicable law. Developer further agrees to clean-up and remediate any hazardous substance discovered or released in connection with the construction and realignment of the sanitary sewer improvements as described herein, expressly including any work on the Property, and Developer agrees to hold harmless and indemnify LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against any release of any such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorney fees, costs and penalties incurred as a result thereof. “Hazardous substance” shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

(11) **TERMINATION.** Developer may terminate this Agreement due to LFUCG’s material breach of the terms hereof which causes Developer to be unable to perform its duties or responsibilities under this Agreement, and only upon sixty (60) days written advance notice to

LFUCG by registered or certified mail. Developer shall have the right to terminate and cancel this Agreement at any time for a substantial change in circumstances, upon thirty (30) days written notice served on LFUCG by registered or certified mail. LFUCG shall have the right to terminate and cancel this Agreement at any time upon thirty (30) days written notice served on Developer by registered or certified mail.

(12) **DEFAULT.** Neither party shall be in default under this Agreement unless and until the non-defaulting party shall have given the defaulting party written notice of such default and the defaulting party shall have failed to cure the default within thirty (30) days after written receipt of such notice. Upon the failure by the defaulting party to timely cure any default after notice thereof from the non-defaulting party, the non-defaulting party shall have the right to terminate the Agreement and pursue an appropriate remedy.

(13) **INDEMNIFICATION AND HOLD HARMLESS.** It is understood and agreed by the Parties that Developer hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Developer or its contractors, subcontractors, agents, servants, owners, principals, licensees, or assigns, under or in connection with this Agreement and/or the provision of services and the performance or failure to perform any work required thereby.

Further, Developer shall indemnify, save, hold harmless, and defend LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against any and all liability, damages, and losses, including but not limited to, demands, claims, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs, and reasonable attorney's fees that are in any way incidental to or connect with, or that arise or are alleged to have arisen, directly or indirectly, from or by the performance or breach of this

Agreement and/or the provision of goods or services by Developer, its contractors, or subcontractors pursuant to this Agreement, provided that (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of Developer, its contractors, or subcontractors; and (b) not caused solely by the active negligence or willful misconduct of LFUCG. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive any termination of this Agreement.

(14) **BINDING EFFECT.** This Agreement shall be binding upon, and shall inure to the benefit of, the executors, heirs, successors, and assigns of the Parties hereto, and neither party shall assign, sublet, or transfer its interests in this Agreement without the written consent of the other party.

(15) **NON-WAIVER.** The failure or delay on the part of Developer or LFUCG to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

(16) **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter contained herein and supersedes all prior offers, negotiations, and other agreements concerning the subject matter contained herein. There are no promises, terms, conditions, or obligations other than those contained herein. No part of this Agreement may be altered, modified, or changed in any way except in writing signed by the Parties hereto or signed by the duly authorized representatives of said Parties. Unless specifically waived herein, all LFUCG ordinances, manuals, rules, regulations, or similar requirements of LFUCG applicable to the subject matter of this Agreement shall control.

(17) **AMENDMENTS.** This Agreement may only be amended by a written agreement of all the Parties hereto. No revision of this Agreement shall be valid unless made in writing and signed by Developer and an authorized signatory on behalf of LFUCG.

(18) **GOVERNING LAW; CHOICE OF FORUM.** The laws of the Commonwealth of Kentucky shall govern this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. Any action brought against LFUCG or Developer on this Agreement, including but not limited to actions either for breach of the agreement or for enforcement of the agreement, shall be brought in a court of appropriate jurisdiction in the Commonwealth of Kentucky.

(19) **SEVERABILITY.** In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement.

(20) **NO THIRD PARTY RIGHTS.** Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the Parties hereto any right, remedy, or claim under or by reason of such agreement or covenant, condition, or stipulation herein contained. Nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the Parties hereto any legal or equitable right, remedy, or claim under or in respect to this Agreement.

(21) **NOTICES.** All notices, consents, demands, or other communications required or permitted to be given or made hereunder shall be sufficiently given or made if given in writing, mailed by reliable overnight courier or by Certified Mail, return receipt, in a sealed envelope, postage prepaid, addressed to Developer or to LFUCG at the following address:

LFUCG: Director of Water Quality
Lexington-Fayette Urban County Government
125 Lisle Industrial Avenue, Suite 180
Lexington, KY 40511

With
copies to: Commissioner of Law
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

Developer: Turner Management, LLC
1002 Five Arrows Lane,
Nicholasville, KY 40356

With a copy to:
Nathan Billings
Billings law Firm, PLLC
145 Constitution St.
Lexington, KY 40507

Any such notice or demand shall be deemed to have been given or made three (3) business days following the date it is deposited in the United States Post Office or on the day following delivery to the overnight courier. Developer or LFUCG may from time to time designate any other address for this purpose by written notice to the other Party.

(22) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original. In the event that any signature is delivered by facsimile or by email of a “.pdf” format data file, such signature shall create a valid and binding obligation of such party with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(23) The execution, delivery and performance of this Agreement and any documents relating hereto have been duly authorized by all necessary Parties, and this Agreement is enforceable in accordance with its terms. Developer and LFUCG have full power and authority to enter into this Agreement, to execute and deliver all instruments and documents referred to herein and to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties by their authorized representative have executed this Agreement as of the Effective Date.

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**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: _____
Linda Gorton, Mayor

ATTEST:

Clerk of the Urban County Council

Turner Estates - 5447 Tates Creek Road: Pump Station and Force Main Connection Schedule of Values

Pump Station

	Labor	Materials	Equipment	Subcontractors	Subtotal
(2) Wet wells with Straeffer pumps and controls.	29000	119000	50000	12000	210000
(1) Valve vault complete	12000	28000	21000	0	61000
(1) 4' diameter splitter MH	1000	2000	1100	0	4100
(1) 5' diameter MH for future odor control	2000	3000	1600	0	6600
(1) set of piping for future odor control to be terminated and capped off prior to future concrete pad area.	2000	2500	2300	0	6800
(1) lump sum of 8" piping and valves between WW & Splitter MH	3000	14500	5000	0	22500
(1) lump sum of electrical work to include concrete pad, rack, hook up of all pumps and telemetry systems. (telemetry material to be provided by LFUCG)				97000	97000
(1) 4-plank black fence as shown on plans				7000	7000
Pump Station Total (shared cost between LFUCG and developer)	49000	169000	81000	116000	415000

Force Main Connection

(180'+/-) 6" SDR21 PVC force main pipe	5000	16000	3400	0	24400
(1) 36" x 6" Existing force main connection	4200	6800	4600	0	15600
FM Connection Total (developer cost only)	9200	22800	8000	0	40000

TOTAL

58200	191800	89000	116000	455000
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This price does not include the following:

- The access drive from Serene Way
- Any concrete work that would encompass the complete PS area
- Any odor control components
- No topsoil replacement or seed and straw of disturbed areas.
- Any permits or fees
- Any erosion control
- Saddletap between existing and new FM connection

(developer cost only)