

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, made and entered into on the 21st day of February 2025, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("LFUCG"), 200 East Main Street, Lexington, Kentucky 40507; **PS Tate Realty, LLC**, and **Karma C. Bryan Realty, LLC**, both with a principal place of business of 101 Hampton Court, Lexington, Kentucky 40508 ("Tate/Bryan"); and **LCP Holdings L.L.C., a Kentucky limited liability company**, whose principal place of business is 219 E High St, Lexington, Kentucky 40507 ("LCP").

WHEREAS, the stacked-rock retaining wall along the rear property lines of 219 East High Street and 227/229 East High Street is deteriorating due to improper drainage;

WHEREAS, the retaining wall along the rear property lines of 219 East High Street and 227/229 East High Street is critical to maintaining proper drainage and preventing erosion in the area;

WHEREAS, Tate/Bryan desire to construct a second building at 227/229 East High Street, close in proximity to the retaining wall;

WHEREAS, the pending construction of a second building on the property located at 227/229 East High Street necessitates the resolution of drainage issues related to the retaining wall to protect its structural integrity;

WHEREAS, LFUCG has an interest in stormwater management and infrastructure maintenance to ensure public safety and compliance with environmental regulations;

WHEREAS, Tate/Bryan and LCP, as property owners of 227/229 East High Street and 219 East High Street, respectively, desire to cooperate with LFUCG to address the structural and drainage issues in a mutually beneficial manner, recognizing the importance of the project to maintain the integrity of their properties and the surrounding public area;

NOW, THEREFORE, the parties agree as follows:

I. PURPOSE & SCOPE

The purpose of this Memorandum of Understanding ("MOU") is to clearly define the roles and responsibilities of LFUCG, Tate/Bryan, and LCP in relation to the repair of the retaining wall and the implementation of drainage improvements abutting 219 East High Street and 227/229 East High Street in Lexington, Kentucky.

II. BACKGROUND

LCP owns 219 East High Street, Lexington, Kentucky 40507. Tate/Bryan own 227/229 East High Street, Lexington, KY 40507. Both properties are adjacent to the aforementioned retaining wall. The Parties desire to improve stormwater drainage and protect public infrastructure through the completion of certain drainage features as

described in Exhibit A ("the Project). Once the Project is designed, the design plans shall replace the current Exhibit A for the purposes of this MOU.

III. LFUCG'S RESPONSIBILITIES

- A. LFUCG shall coordinate with Tate/Bryan and LCP for the proper connection of the drainage features to the public infrastructure. LFUCG shall manage the Project in consultation with LCP and Tate/Bryan. LFUCG shall obtain all city, state, historic, and utility permits to complete the Project.
- B. To the extent LFUCG has not previously entered into a contract which could be utilized to design and/or construct the Project, LFUCG shall place any and all aspects of the Project out for bid and/or Request for Proposals, as a whole or in phases, in its sole discretion, including by separate bid, separate Request for Proposals, or a bid alternate for the construction described in IV and V. Whether a response to a bid is approved and awarded, or whether the Project is rebid, shall be in the sole discretion of LFUCG.
- C. Subject to the appropriation of sufficient funds, LFUCG shall be responsible for those costs associated with the following parts of the Project:
 - i. Construction of a new manhole in or around Vine Street and an outlet pipe connecting the manhole to the existing public storm sewer system; and
 - ii. Replace the retaining wall abutting 227/229 East High Street and 219 East High Street, including all necessary back filling and impaction on these properties and a railing on the top of the 227/229 and 219 East High Street wall similar to the existing railing on 227/229 East High Street. The property owner of each respective parcel shall be responsible for all costs associated with any final surface other than sod.
- D. Upon the completion of that portion of the Project described in III(C)(ii), LFUCG shall execute a quitclaim deed to Tate/Bryan for any and all rights LFUCG may have in the real property which contains the portion of the existing retaining wall abutting 227/229 East High Street, as is, with no warranties expressed or implied.
- E. Upon the completion of that portion of the Project described in III(C)(ii), LFUCG shall execute a quitclaim deed to LCP, transferring any and all rights LFUCG may have in the real property which contains the portion of the retaining wall abutting 219 East High Street, as is, with no warranties expressed or implied.
- F. LFUCG shall invoice Tate/Bryan and LCP for any costs incurred which are the responsibility of Tate/Bryan and/or LCP under this MOU.

IV. TATE/BRYAN'S RESPONSIBILITIES

- A. Tate/Bryan shall work with LCP to implement and ensure proper conveyance of runoff from 227/229 East High Street to the public infrastructure as coordinated with LFUCG.
- B. Tate/Bryan agree to delay construction on 227/229 East High Street until such time as that portion of the Project described in III(C)(ii) is completed.
- C. Tate/Bryan shall be joint and severally liable with LCP for those costs associated with the following parts of the Project:
 - i. Replacement of the existing inlet on 227/229 East High Street, as provided in Exhibit A;
 - ii. Construction of a new surface inlet on 219 East High Street, as provided in Exhibit A;
 - iii. Connection of the inlet described in IV(C)(i) to the inlet described in IV(C)(ii); and
 - iv. Connection from the inlet described in IV(C)(ii) to the new manhole described in III(C)(i).
- D. Tate/Bryan shall accept the quitclaim deed from LFUCG described in III(D), above, including executing any necessary documents related thereto. All costs of recording shall be borne by Tate/Bryan.
- E. Tate/Bryan shall provide LFUCG and its contractors with any and all access deemed necessary by LFUCG, including, but not limited to, rights of entry and temporary easements, for the construction of the Project.
- F. Tate/Bryan shall pay all invoices sent from LFUCG pursuant to III(F), above, within thirty days of receipt.
- G. Tate/Bryan shall accept the permanent easement described in Section V(F), below, including executing any necessary document related thereto.
- H. Upon completion of the Project, Tate/Bryan shall maintain the elements of the Project contained on 227/229 East High Street and the portion subject to the quitclaim deed referenced above.

V. LCP'S RESPONSIBILITIES

- A. LCP shall work with Tate/Bryan to implement and ensure proper conveyance of runoff to the public infrastructure as coordinated with LFUCG.
- B. LCP shall be joint and severally liable with Tate/Bryan for those costs

associated with the following parts of the Project:

- i. Replacement of the existing inlet on 227/229 East High Street, as provided in Exhibit A;
 - ii. Construction of a new surface inlet on 219 East High Street, as provided in Exhibit A;
 - iii. Connection of the inlet described in V(B)(i) to the inlet described in V(B)(ii); and
 - iv. Connection from the inlet described in V(B)(ii) to the new manhole described in III(C)(i).
- C. LCP shall accept the quitclaim deed from LFUCG described in III(E), above, including executing any necessary documents related thereto. All costs of recording shall be borne by LCP.
- D. LCP shall provide LFUCG and its contractors with any and all access deemed necessary by LFUCG, including, but not limited to, rights of entry, temporary easements, for the construction of the Project.
- E. LCP shall pay all invoices sent from LFUCG pursuant to III(F), above, within thirty days of receipt.
- F. LCP shall execute a permanent easement, recorded in the records of the Fayette County Clerk, for the benefit of Tate/Bryan, to allow Tate/Bryan to discharge the stormwater collected in the new surface inlet described herein to the extent it will travel, via the infrastructure described herein, through the land of LCP.
- G. Upon completion of the Project, LCP shall maintain the elements of the Project contained on 219 East High Street and the portion subject to the quitclaim deed referenced above.

VI. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. Each party shall comply with all applicable federal, state, and local laws and regulations during the completion of the project.

- B. This MOU may be amended by mutual agreement of all parties.
- C. Any disputes arising under this MOU shall first be addressed by negotiation between the parties. If the parties are unable to resolve the dispute through negotiation, the matter will be referred to mediation. If mediation fails to resolve the dispute, the parties may only seek resolution in the Circuit Court of Fayette County, Kentucky.
- D. This MOU may be terminated for cause by any party upon 30 days written notice, specifying the breach and allowing time to cure.
- E. This MOU may be terminated without cause by mutual written consent of all parties, with 60 days written notice.
- F. Each party shall appoint a person to serve as the official contact and coordinate the activities of each organization in carrying out this MOU.
- G. This MOU shall bind the successors and assigns of the parties and shall run with the land for the duration of the MOU.
- H. This MOU may be recorded in the records of the Fayette County Clerk. LCP and Tate/Bryan shall disclose this MOU upon the sale of 219 East High Street or 227/229 East High Street.
- I. The parties hereto expressly agree that this MOU shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the Commonwealth of Kentucky and that the exclusive venue of any legal action shall be Fayette County Circuit Court.
- J. The fact that this MOU may have been initially drafted by one party or the other shall have no bearing in its interpretation or construction.

VII. EFFECTIVE DATE AND SIGNATURE

- A. This MOU shall be effective upon the signature of the parties' authorized officials.
- B. It shall be in force from the date of its execution until the completion of each party's responsibilities described herein.
- C. The parties indicate agreement with this MOU by their signatures.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have made and executed this MOU as of the day and year first above written.

**LEXINGTON-FAYETTE URBAN
GOVERNMENT**

By: 
LINDA GORTON, MAYOR

PS TATE REALTY, LLC

BY: 

ATTEST:


URBAN COUNTY COUNCIL CLERK

KARMA C. BRYAN REALTY, LLC

BY: 

**LCP HOLDINGS L.L.C., A KENTUCKY
LIMITED LIABILITY COMPANY**

BY: 

Prepared by

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