

**THE INDUSTRIAL DEVELOPMENT BOARD
OF
THE CITY OF BRISTOL TENNESSEE
CALLED MEETING
AGENDA**

**MONDAY AUGUST 9, 2021 – 12 NOON
CITY HALL ANNEX**

1. Call to order
2. Roll Call
3. **IDB RESOLUTION 21-3 – RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BY AND AMONG THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF BRISTOL, TENNESSEE, A.G. COMMERCIAL, G.P., AND THE CITY OF BRISTOL, TENNESSEE**
4. Adjourn

IDB RESOLUTION 21-3

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BY AND AMONG THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF BRISTOL, TENNESSEE, A.G. COMMERCIAL, G.P., AND THE CITY OF BRISTOL, TENNESSEE

WHEREAS, the Industrial Development Board of the City of Bristol, Tennessee (the "IDB") is a public nonprofit corporation organized and existing under the laws of the State of Tennessee and is a public instrumentality of the City of Bristol Tennessee (the "City"); and

WHEREAS, the IDB was created and organized for the public purpose of promoting industry and developing trade by inducing manufacturing, industrial, governmental, educational and commercial enterprises to locate in or remain in the State of Tennessee and to further the use of its agricultural products and natural resources; and

WHEREAS, the IDB is authorized under Tennessee Code Annotated Section 7-53-101 *et seq.* (the "IDB Act") to exercise broad powers in furtherance of economic and commercial development; and

WHEREAS, by resolution number 21-83, adopted on August 3, 2021, the City of Bristol, Tennessee approved the City's entry into a Development Agreement by and among the City, the IDB, and A.G. Commercial, G.P. (the "Developer"), in the form attached hereto as Exhibit A; and

WHEREAS, the Development Agreement contemplates that certain real property located in the City of Bristol, Tennessee will be given to the IDB, and that the IDB will then sell the property to the Developer for the purposes laid out in the Development Agreement; and

WHEREAS, the Development Agreement requires the Developer to construct a mixed-use commercial development that will meet standards set forth in the Development Agreement, the ground floor of which will house retail, office space, and restaurant space (such retail, office space and restaurant space being known as the "Development"); and

WHEREAS, the IDB is authorized under TCA 7-53-310 to acquire a project site by gift from the City of Bristol, pursuant to authorizing resolution of the governing body of the municipality; and

WHEREAS, the IDB is authorized under Tennessee Code Annotated Section 7-53-302(a)(8) to "sell, exchange, donate and convey any or all of its properties, including, without limitation, all or any part of the rents, revenues and receipts of the corporation from its projects, whenever its board of directors shall find any such action to be in furtherance of the purposes for which the corporation was organized"; and

WHEREAS, under the IDB Act, a "project" includes land, buildings and improvements that are suitable for office buildings or commercial enterprises engaged in selling, providing, or handling financial services or selling any products of agriculture, mining or industry, or any combination thereof;" and

WHEREAS, the Development will provide additional space for financial services, retail and restaurants to locate in the City of Bristol, Tennessee, providing additional jobs, and will serve as the basis for loft housing units to be constructed above the Development; and

WHEREAS, the mixed-use commercial development will be constructed on land currently owned by the City of Bristol, Tennessee that has been vacant or underutilized for several years, and the Development will put such property into productive use, increasing the property tax base and providing jobs in the City's downtown central business district; and

WHEREAS, the Board of Directors of the IDB has met pursuant to proper notice, and has considered at such public meeting the Development Agreement; and

WHEREAS, the IDB desires to approve the Development Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF BRISTOL, TENNESSEE:

1. The Development is a "Project" within the meaning of the IDB Act.
2. The facilitation of the Development through the IDB's sale of the Property to the Developer under the terms set forth in the Development Agreement will promote trade and commercial activity.
3. The financing of the Development through the acceptance of the Promissory Note contemplated by the Development Agreement will develop trade and commerce in the City of Bristol, will contribute to the general welfare and alleviate conditions of unemployment, and will lead to an increase in the quantity of housing available in the City, and will thus be in furtherance of the purposes for which the IDB was formed.
4. The Chairman, or in his absence the Vice Chairman, is hereby authorized to execute the Development Agreement in the name of and on behalf of the IDB.
5. Each officer of the IDB is hereby authorized to execute, and to acknowledge if appropriate, in the name of and on behalf of the IDB, and, if requested, to attest the same under its corporate seal or otherwise, and to deliver to the appropriate person or entity, any and all instruments or documents that may be approved by counsel for the IDB as necessary or appropriate to implement the Amendment to the Development Agreement, including without limitation those relating to each transaction and other matter contemplated therein, with the execution thereof by such officers to constitute conclusive evidence of the approval of the same.
6. All other acts of the officers of the IDB, and of its authorized representative as designated hereinabove, which are in conformity with the purposes and intent of this resolution and the Development Agreement, including each of the transactions and matters contemplated therein, are hereby approved and confirmed.

Adopted this ____ day of _____, 2021.

David Wagner, Chairman

ATTEST:

Rob Nicar, Secretary/Treasurer

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (herein, the “Agreement”) is made and entered into as of the 4th day of August, 2021 (the “Effective Date”), by and among **THE CITY OF BRISTOL, TENNESSEE**, a Tennessee municipal corporation (the “City”), **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF BRISTOL, TENNESSEE**, a public nonprofit corporation organized under Tenn. Code Ann. §§ 7-53-101, et. seq. (the “IDB”), and **A.G. COMMERCIAL, G.P.**, a Tennessee general partnership (the “Developer”).

WITNESSETH:

WHEREAS, the City owns certain real property located in the 17th Civil District of the Sullivan County, in the City limits of Bristol, Tennessee, and being more particularly described on Exhibit A attached hereto (the “Property”); and

WHEREAS, the Developer has proposed the development of the Property as a mixed-use residential and commercial development (the “Project”); and

WHEREAS, pursuant to Section 2-3 of its Charter, the City has the power to purchase, acquire, receive and hold, maintain, improve, sell, lease, mortgage, pledge or otherwise dispose of real property for the benefit of the City; and

WHEREAS, the Section 2-142 of the City’s Code of Ordinances provides that the City is permitted to dispose of surplus city property by transferring such property to another governmental entity or agency at or below reasonable market value; and

WHEREAS, by Resolution 21-83, adopted on August 3, 2021, the City Council approved the form of this Development Agreement and authorized the transfer of the Property to the IDB in accordance with the terms of this Development Agreement; and

WHEREAS, pursuant to Tenn. Code Ann. §§ 7-53-101 et seq. (the “IDB Act”), the IDB is authorized to acquire, whether by purchase, exchange, gift, lease or otherwise, and to own, lease and dispose of properties for the purposes identified therein, and has the authority to make loans and forgive the debt associated with such loans; and

WHEREAS, the IDB Act defines a “project” to include “land, buildings and improvements that are suitable for office buildings or commercial enterprises engaged in selling, providing, or handling financial services or selling any products of agriculture, mining or industry, or any combination thereof”; and

WHEREAS, the use of the Property to construct additional retail, office space, and restaurant space within the City of Bristol is a project as defined by the IDB Act; and

WHEREAS, the IDB has agreed to sell, and the Developer has agreed to purchase and develop, the Property, under the terms and conditions set forth in this Development Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and mutual agreements by and between the parties, as hereafter set forth in detail, the parties do hereby mutually agree as follows:

Article I. REPRESENTATIONS AND WARRANTIES

Section 1.01 Representation and Warranties of City. The City represents and warrants for the benefit of the IDB and the Developer as follows:

- (a) Organization. The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee, is in compliance with the laws of the State of Tennessee, and has the power and authority to own its properties and assets and to carry on its business in the State of Tennessee as now being conducted and as hereby contemplated.
- (b) Authority. The City has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the City.
- (c) Binding Obligations. This Agreement is a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms, subject to applicable insolvency laws and equitable principles.
- (d) No Litigation. No litigation at law or in equity or proceeding before any governmental agency involving the City is pending or, to the knowledge of the City, threatened, in which any liability of the City is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the City or the performance of its obligations hereunder.
- (e) No Default. The City is not in default under or in violation of, and the execution, delivery and compliance by the City with the terms and conditions of this Agreement will not conflict with or constitute or result in a default under or violation of, (i) any material agreement or other instrument to which the City is a party or by which it is bound, or (ii) any constitutional or statutory provisions or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the City or its property, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.
- (f) Environmental Documents. Prior to the execution of this Agreement, the City has provided the Developer with a full and complete copy of any environmental reports or assessments in its possession or control related to the Developer Property, and a copy of the Brownfield Voluntary Agreement for Former Coyne Industries and Bristol Products Sites, Site Number 82-564 (the "Voluntary Brownfield Agreement").

Section 1.02 Representation and Warranties of IDB. The IDB represents and warrants for the benefit of the Developer and the City as follows:

- (a) Organization. The IDB is a public non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee, is in compliance with the laws of the State of Tennessee, and has the power and authority to own its properties and assets and to carry on its business in the State of Tennessee as now being conducted and as hereby contemplated.
- (b) Authority. The IDB has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the IDB.
- (c) Binding Obligations. This Agreement is a legal, valid and binding obligation of the IDB enforceable against the IDB in accordance with its terms, subject to applicable insolvency laws and equitable principles.
- (d) No Litigation. No litigation at law or in equity or proceeding before any governmental agency involving the IDB is pending or, to the knowledge of the IDB, threatened, in which any liability of the IDB is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the IDB or the performance of its obligations hereunder.
- (e) No Default. The IDB is not in default under or in violation of, and the execution, delivery and compliance by the IDB with the terms and conditions of this Agreement will not conflict with or constitute or result in a default under or violation of, (i) any material agreement or other instrument to which the IDB is a party or by which it is bound, or (ii) any constitutional or statutory provisions or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the IDB or its property, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

Section 1.03 Representations and Warranties of Developer. The Developer represents and warrants for the benefit of the IDB and the City as follows:

- (a) Organization. The Developer is a general partnership duly organized, validly existing and in good standing under the laws of the State of Tennessee, is in compliance with the laws of the State of Tennessee, and has the power and authority to own its properties and assets and to carry on its business in the State of Tennessee as now being conducted and as hereby contemplated.
- (b) Authority. The Developer has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Developer.
- (c) Binding Obligations. This Agreement is a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms, subject to applicable insolvency laws and equitable principles.

- (d) No Litigation. No litigation at law or in equity or proceeding before any governmental agency involving the Developer is pending or, to the knowledge of the Developer, threatened, in which any liability of the Developer is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the Developer or the performance of its obligations hereunder.
- (e) Environmental Documents. Developer has received and has had the opportunity to review the environmental reports provided by the City, including the Voluntary Brownfield Agreement and Notice of Land Use Restrictions associated with the Property.
- (f) Financial Resources. Developer has sufficient financial resources or access to credit to complete the Project according to the terms of this Agreement, including meeting the Milestones described herein. Developer has made available to the City and the IDB a letter dated July 22, 2021 from a lender, acceptable to the City and the IDB, indicating a willingness to provide financing for the Project if it meets the lender's underwriting conditions, and such letter has not been withdrawn or amended as of the Effective Date and as of the Closing Date.
- (g) No Default. The Developer is not in default under or in violation of, and the execution, delivery and compliance by the Developer with, the terms and conditions of this Agreement will not conflict with or constitute or result in a default under or violation of, (i) any material agreement or other instrument to which the Developer is a party or by which it is bound, or (ii) any constitutional or statutory provisions or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Developer or its property, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

Article II. SALE OF PROPERTY

Section 2.01 Transfer of Property to IDB. Promptly after the satisfaction of the conditions described in Section 2.06, the City shall transfer the Property to the IDB by special warranty deed. The City shall be responsible for any costs associated with recording the deed to the IDB.

Section 2.02 Sale of Property to Developer. The IDB agrees to sell and the Developer agrees to purchase the Property, including all easements, rights and appurtenances relating thereto, at the purchase price provided in Section 2.03 hereof. The Property shall be conveyed to the Developer by special warranty deed from the IDB, which conveyance shall not be subject to any liens or encumbrances, except for those that are of record at the time of this Agreement, unless otherwise approved in writing by the Developer or as specified herein. The Developer and the IDB shall each be responsible for their own expenses incurred in connection with such acquisition. At the request of the Developer, the IDB shall provide the Developer with all other pertinent reports, studies and examinations relating to the Property that are in the IDB's possession or control. The Developer shall be responsible for the payment of all property taxes relating to the Property from the date of acquisition by the Developer. The location of the closing of the purchase of the Property (the "Closing") shall be in the City at a location to be mutually agreed upon by the parties.

Section 2.03 Purchase Price. The parties agree that the purchase price for the Property shall be One Million Thirty-Seven Thousand Three Hundred Eighty-Two Dollars (\$1,037,382.00).

Section 2.04 Promissory Note.

- (a) At the Closing, the Developer shall execute a promissory note, in substantially the form attached hereto as Exhibit B, to the IDB for the Purchase Price of the Property. The promissory note shall provide that if the milestones set forth below (the “Milestones”) are met at the times specified below, then the IDB shall grant the Developer forgiveness of the promissory note as set out below. If any Milestone is not met by the deadline set forth below, then the corresponding portion of the Purchase Price shall not be forgiven, and shall be due and payable; provided, however, that the Developer shall have the right to cure such failure to meet a Milestone in the same way that Events of Default may be cured as set forth in Section 4.01.

Deadline	Milestone	Grant
December 31, 2021	Developer has completed construction of the parking lot on the southern half of the Property. “Completion” of the parking lot means that it is paved, striped, and open to the public for parking of vehicles.	20% of Purchase Price.
August 4, 2022	Developer has entered into preleasing agreements covering fifty percent (50%) of the Commercial Space in the Project.	20% of Purchase Price.
February 4, 2023	Developer has entered into preleasing agreements covering seventy-five percent (75%) of the Commercial Space in the Project.	20% of Purchase Price.
August 4, 2023	Developer has completed footers for Project.	20% of Purchase Price.
August 4, 2024	Developer has completed Commercial Space portion of Project (evidenced by Certificates of Occupancy being issued for one hundred percent (100%) of the Commercial Space)	20% of Purchase Price.

- (b) The IDB and the City shall have the right to inspect any preleasing agreements that are being used to satisfy the Milestones. “Commercial space” for purposes of these Milestones means space dedicated to retail, restaurant, professional office, or other non-residential tenants.
- (c) On completion of each Milestone, Developer shall provide the IDB with written confirmation that such Milestone has been met. The IDB shall have 30 days to review such written confirmation, and may request additional information from Developer, to determine whether the Milestone has been met. If the IDB finds that the Milestone has not

been met, the Developer shall have the opportunity to cure as provided herein. If the Milestone has been met, the IDB shall issue an instrument forgiving the corresponding portion of the Promissory Note.

Section 2.05 Deed of Trust. The Promissory Note shall be secured by a deed of trust for the Property for the benefit of the IDB. The IDB shall subordinate its Deed of Trust at the request of the Developer if necessary for financing the project; provided, however, that the IDB shall have no obligation to subordinate its Deed of Trust prior to the satisfaction of the third Milestone set forth above.

Section 2.06 Conditions to Closing on Sale of Property. The obligations of the City to transfer the Property to the IDB, and of the IDB to transfer the Property to Developer, are subject to the satisfaction, at or prior to the Closing, or waiver in writing by the IDB and the City, of the following conditions:

- (a) Developer has delivered the Promissory Note and Deed of Trust to the IDB.
- (b) Developer has undertaken certain work, including site preparation and grading, on the Property. All such work has been at the Developer's sole risk and expense. All contractors and subcontractors who have performed such work have been paid in full (unless good faith disputes exist, in which case the contractor or subcontractor has been paid all undisputed amounts).
- (c) Developer has provided the City with a release of liens from each contractor and subcontractor who performed work on the Property.

Section 2.07 Effect of Failure to Close. Should the Closing not occur for any reason prior to the date that is sixty (60) days from the Effective Date, then this Agreement shall terminate immediately and have no further force and effect, except for those provisions that are intended to survive the termination of the Agreement.

Article III. DEVELOPER'S OBLIGATIONS

Section 3.01 Development of Project. The Developer shall construct the Project as a mixed-use commercial and residential property in substantially the form shown on the Approved Plan attached hereto as Exhibit C. The design and construction of the Project shall be undertaken in compliance with the Voluntary Brownfield Agreement and the restrictions contained therein.

Section 3.02 Minimum Standards for Project. Unless otherwise agreed to in writing by the City and IDB, the Project shall meet the minimum standards set out in Exhibit D. The Project shall be constructed according to the Milestones described herein.

Section 3.03 Other Local Incentives. The transfer of the Property to the Developer represents a substantial local investment in the success of the Project. For this reason, Developer shall not seek or accept any incentive for the Project or related to the Property, to the extent that such incentive is based on or would reduce the amount of real or personal ad valorem taxes assessed on the

Property and owing to the City. For the purposes of this provision, “incentive” includes, but is not limited to, payment in lieu of tax arrangements or tax increment financing arrangements. This Section 3.03 shall remain in effect until such time as the total real and personal ad valorem taxes paid to the City as a result of the improvements on the Property (exclusive of penalty and interest and in excess of the combined real and personal property taxes owing on the parcels that make up the Property in the last year prior to the date of this Agreement in which such parcels were subject to taxation) equals the Purchase Price.

Section 3.04 Parking Lot. The Developer shall permit the parking lot described in Section 2.04 above to be used by the public during regular business hours, except for space reasonably necessary for parking equipment and storing materials during construction; provided, however, that this obligation shall terminate on completion of the fifth Milestone described above (completion of Commercial Space).

Article IV. EVENTS OF DEFAULT AND REMEDIES

Section 4.01 Developer Event of Default. The occurrence and continuance of any of the following events shall constitute a “Developer Event of Default”:

- (a) failure of the Developer to perform any of its obligations under this Agreement after written notice is given to the Developer of such failure and the Developer has not cured such failure within sixty (60) days of such notice; provided, however, the period to cure the failure to maintain insurance as provided in Section 5.01 below shall be ten (10) business days following such notice; and provided, further, however, that there shall be no right to cure a failure to satisfy any of the conditions to Closing described in Section 2.06; or
- (b) any material representation, warranty, certification or other statement made or deemed made by the Developer in this Agreement or in any statement or certificate at any time given by the Developer in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or as of the date of Closing; or
- (c) a court of competent jurisdiction shall enter a decree or order for relief in respect of the Developer in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed, or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against the Developer under any applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Developer, as the case may be, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of either Developer for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of

either Developer, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

- (d) either Developer shall have an order for relief entered with respect to it or shall commence a voluntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or either Developer shall make any assignment for the benefit of creditors, or either Developer shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or either Developer shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 9.01(c).

Section 4.02 City and IDB Remedies. If a Developer Event of Default occurs hereunder, either the City or the IDB may (a) terminate this Agreement, following notice to the Developer and opportunity to cure as provided above, at which time all of the rights and privileges of the Developer hereunder shall cease and be of no further force or effect, and/or (b) pursue whatever other remedies are available at law or in equity which are necessary or desirable to effect the purposes of this Agreement.

Section 4.03 Acceleration of Developer Debt. On termination of this Agreement by the IDB or the City, the promissory note described in Section 2.04 above shall become immediately due and payable, and in addition to the remedies described above following a Developer Event of Default and opportunity to cure as provided above, the IDB may foreclose on the Deed of Trust, to the extent that any amounts remain unforgiven under the Promissory Note.

Section 4.04 IDB's Right of First Refusal.

- (a) In addition to any other remedies available to the IDB under this Article, upon the occurrence of a Developer Event of Default, the IDB shall have the right to purchase the Property, as improved, from the Developer at the Property's then current fair market value, less any amounts already forgiven under the Promissory Note. The fair market value shall be determined by an appraisal conducted by an appraiser selected by the IDB and the Developer, with the costs of the appraisal to be split between the IDB and the Developer. In the event the IDB and the Developer are not able to agree on an appraiser, each may retain its own appraiser to conduct an appraisal, and the fair market value shall be the average of the two appraisals.
- (b) The IDB must give notice that it wishes to start the appraisal process to the Developer and the City within five (5) days of the expiration of any cure period applicable to the Event of Default. Following the receipt of the appraisal, or, the last to be completed of two appraisals, the IDB shall have fifteen (15) days to determine whether it wishes to exercise its right of first refusal.

Section 4.05 Waiver. No failure by the IDB or the City to exercise any right, remedy, or option under this Agreement or any present or future supplement hereto, or delay by the IDB or the City in exercising the same, will operate as a waiver thereof. No waiver by the IDB or the City will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by the IDB or the City on any occasion shall affect or diminish the City or the IDB's rights thereafter to require strict performance by the Developer of any provision of this Agreement. The City and the IDB's rights under this Agreement will be cumulative and not exclusive of any other right or remedy which the IDB and the City may have.

Section 4.06 IDB or City Events of Default. The occurrence and continuance of any of the following events shall constitute a "Governmental Event of Default":

- (a) failure of either the IDB or the City to perform any of its obligations under this Agreement after written notice is given to the IDB or the City of such failure and the IDB or the City have not cured such failure within sixty (60) days of such notice; or
- (b) any material representation, warranty, certification or other statement made or deemed made by either the IDB or the City in this Agreement or in any statement or certificate at any time given by either the IDB or the City in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made; or
- (c) (i) a court of competent jurisdiction shall enter a decree or order for relief in respect of either the IDB or the City in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed, or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against either the IDB or the City under any applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over either the IDB or the City, as the case may be, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of either the IDB or the City for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of either the IDB or the City, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or
- (d) either the IDB or the City shall have an order for relief entered with respect to it or shall commence a voluntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or either the IDB or the City shall make any assignment for the benefit of creditors, or either the IDB or the City shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as

such debts become due; or either the IDB or the City shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein.

Section 4.07 Developer Remedies. If a Governmental Event of Default occurs hereunder, the Developer may pursue whatever remedies are available at law or in equity which are necessary or desirable to effect the purposes of this Agreement.

Article V. INSURANCE AND INDEMNITY

Section 5.01 Insurance. The Developer shall acquire and maintain during the term of this Agreement commercial general liability insurance covering claims for bodily injury, death and property damage in the amount not less than Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. The Developer may provide the coverage required herein through the use of a primary liability policy or through a combination of primary liability and umbrella excess liability policies. All required policies of insurance and any endorsements, renewals or replacements thereof shall be in form and substance satisfactory to the IDB and the City, and shall be issued by a company licensed in the State of Tennessee and acceptable to the IDB and the City. The IDB and the City shall be named as additional insureds with respect to such liability policies. All policies shall contain a written obligation on the part of the insurance carrier to notify the IDB in writing not less than thirty (30) days prior to the effective date of any cancellation or material modification of any such insurance coverage. At least thirty (30) days prior to the expiration date of any of the policies, the Developer shall deliver to the IDB an insurance certificate establishing coverage in form satisfactory to the IDB.

Section 5.02 Indemnity. The Developer shall indemnify the IDB and the City, their respective successors and assigns, and every director, officer, employee of the IDB and the City (individually, an "Indemnitee") with respect to, and hold each Indemnitee harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for any Indemnitee in connection with any investigative, administrative or judicial proceeding, whether or not such Indemnitee shall be designated a party thereto) which may be imposed on, incurred by, or asserted against such Indemnitee, in any way relating to or arising out of this Agreement (other than as a result of a breach hereof by the IDB or the City), the development of the Project, the breach of any of Developer's representations and warranties, or the nonpayment of any contractor or subcontractor who has performed work on the Property prior to the date of this Agreement (other than contractors or subcontractors retained by the City) ("Indemnification Liabilities"). The Developer shall reimburse each Indemnitee on demand from time to time for all Indemnification Liabilities incurred by such Indemnitee. Each Indemnitee will promptly notify the Developer of the commencement of any proceeding involving it in respect of which indemnification may be sought pursuant to this Section. The obligations of the Developer under this Section shall survive the termination of this Agreement.

Article VI. DISPUTE RESOLUTION PROCEDURES

Section 6.01 Cooperation. The parties desire to cooperate with each other in the performance of their obligations hereunder. In keeping with this cooperative spirit and intent, any dispute arising

hereunder will first be referred to the parties' respective agents or representatives for resolution. Those agents or representatives will endeavor in good faith to resolve any such disputes within the limits of their authority and within thirty (30) days after the commencement of such discussions. If any dispute remains unresolved after the parties have engaged in such cooperative dispute resolution, the matter will be resolved pursuant to Section 6.02 below.

Section 6.02 Mediation. If any dispute between the parties has not been resolved pursuant to Section 6.01 above, the parties will endeavor to settle the dispute by mediation. Within ten (10) business days from the date that the parties cease direct negotiations pursuant to Section 6.01 above, the City shall select a neutral third party mediator, who shall be subject to the reasonable approval of the IDB and the Developer. Each party will bear its own cost of mediation; provided, however, the cost charged by any independent third party mediator will be borne equally by the parties. The mediation shall take place in Sullivan County, Tennessee. The parties' efforts to reach a settlement of any dispute will continue until the conclusion of the mediation proceeding. The mediation proceeding will be concluded when: (i) a written settlement agreement is executed by the parties, or (ii) the mediator concludes and informs the parties in writing that further efforts to mediate the dispute would not be useful or (iii) the parties agree in writing that an impasse has been reached. Notwithstanding the foregoing, either party may withdraw from the mediation proceeding without liability therefor in the event such proceeding continues for more than thirty (30) days from the commencement of such proceeding. For purposes of the preceding sentence, the proceeding will be deemed to have commenced following the completion of the selection of a mediator as provided herein.

Section 6.03 Confidentiality. The parties agree that any mediation proceeding (as well as any discussion pursuant to Section 6.01) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential, and privileged communication by the parties and the mediator. No stenographic, visual or audio record will be made of any mediation proceedings or such discussions. All conduct, statements promises, offers and opinions made in the course of the mediation or such discussion by any party, its agents, employees representatives or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the parties and will not be disclosed to any third party. The foregoing confidentiality obligations shall apply to the City and the IDB to the fullest extent permissible under governing law related to public records.

Section 6.04 Binding Effect. The parties agree that this mediation procedure will be obligatory and participation therein legally binding upon each of them, to the extent permitted by applicable law for the City and the IDB. In the event that either party refuses to adhere to the mediation procedure set forth in this Article, the other party may bring an action to seek enforcement of such obligation in any court of competent jurisdiction that meets the requirements of this Article.

Section 6.05 Failure of Mediation to Resolve Disputes. If any dispute has not been resolved pursuant to the foregoing, either party can pursue its available remedies at law or in equity.

Section 6.06 Equitable Litigation. The procedure specified in this Article shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party, without prejudice to the above procedures, may

file a complaint to seek a preliminary injunction or other provisional judicial relief, if in its sole discretion such action is necessary to avoid irreparable damage or to preserve the status quo (“Equitable Litigation”). Despite such action, the parties will continue to participate in faith good in the procedures specified in this Article. Any interim or appellate relief granted in such Equitable Litigation shall remain in effect until the alternative dispute resolution procedures described in this Article concerning the dispute that is the subject of such Equitable Litigation result in a settlement agreement or a final judgment. Such written settlement agreement or final judgment shall be the final, binding determination on the merits of such dispute, shall supersede and nullify any decision in the Equitable Litigation, and shall preclude any subsequent litigation on such merits, notwithstanding any determination to the contrary in connection with any Equitable Litigation granting or denying interim relief or any appeal therefrom.

Section 6.07 Statute of Limitations. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Article are pending. The parties will take such action, if any, required to effectuate such tolling. Each party shall be required to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances.

Section 6.08 Venue. The parties hereto (i) irrevocably submit to the jurisdiction of the state courts of the State of Tennessee located in Sullivan County, Tennessee and to the jurisdiction of the United States District Court for the Eastern District of Tennessee for the purpose of any suit, action, or other proceeding arising out of or based upon this Agreement; (ii) waive and agree not to assert by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim (A) that it is not subject personally to the jurisdiction of the above-named courts, (B) that the suit, action, or proceeding is brought in any inconvenient forum, and (C) that the venue of the suit, action, or proceeding is improper.

Article VII. MISCELLANEOUS

Section 7.01 City and IDB Liability. NEITHER THE IDB NOR THE CITY SHALL HAVE ANY PECUNIARY LIABILITY UNDER THIS AGREEMENT FOR ANY ACT OR OMISSION OF THE IDB OR THE CITY. UNDER NO CIRCUMSTANCES SHALL THE IDB OR THE CITY BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES, ALL OF WHICH ARE HEREBY WAIVED BY THE DEVELOPER. NO RECOURSE SHALL BE HAD FOR ANY CLAIM BASED UPON ANY OBLIGATION, COVENANT OR AGREEMENT IN THIS AGREEMENT OR ANY TRANSACTION OR MATTER RELATING HERETO AGAINST ANY PAST, PRESENT OR FUTURE DIRECTOR, OFFICER, MEMBER, EMPLOYEE, COUNSEL, OR AGENT OF THE IDB OR THE CITY, WHETHER DIRECTLY OR INDIRECTLY, AND ALL SUCH LIABILITY OF ANY SUCH INDIVIDUAL AS SUCH IS EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND IN CONSIDERATION FOR THE IDB AND THE CITY ENTERING INTO THIS AGREEMENT. IN NO EVENT SHALL THE CITY BE OBLIGATED FOR ANY OBLIGATION OF THE IDB HEREUNDER, AND THE OBLIGATIONS OF THE CITY ARE EXPRESSLY LIMITED TO THE SPECIFIC OBLIGATIONS OF THE CITY HEREUNDER. NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT THE DEVELOPER MAY ENFORCE THE TERMS OF THIS

AGREEMENT THROUGH A CLAIM FOR SPECIFIC PERFORMANCE, INCLUDING, BUT NOT LIMITED TO, SPECIFIC PERFORMANCE TO ENFORCE THE IDB AND THE CITY'S OBLIGATIONS. THE SALE OF REAL PROPERTY CONTEMPLATED HEREIN IS MADE AS IS WITH NO WARRANTIES EXPRESS, AND/OR IMPLIED, ALL OF WHICH ARE HEREBY DISCLAIMED. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SELLER SHALL HAVE NO LIABILITY FOR PROPERTY CONDITION MATTERS AND/OR ANY REPAIR OBLIGATIONS OF ANY NATURE WHATSOEVER.

Section 7.02 Term. Unless terminated earlier as provided herein or by mutual agreement of the parties or their successors and assigns, this Agreement shall be effective as of the date hereof and shall remain in effect until the parties have performed all of their obligations hereunder, or until three (3) years from the date of the Closing described in Section 2.02 above, whichever is later. Notwithstanding the foregoing, Section 3.03 shall survive any other termination of this Agreement.

Section 7.03 Assignment. The Developer may not assign or transfer this Agreement, or any interest of the Developer hereunder, without the prior written consent of the City and the IDB, which consent shall not be unreasonably withheld. Any such assignment shall not relieve the Developer of the Developer's liability for the performance of its duties and obligations hereunder unless the City and the IDB consent to such release. Notwithstanding the above, no consent shall be required for assignments or transfer to Affiliates of the Developer as long as the Developer or owners of the Developer control a majority interest in the equity of such Affiliate.

- (a) Affiliate shall mean, as to any Person, any other Person directly or indirectly controlling (including all directors, officers and employees of such Person), directly or indirectly controlled by or under direct or indirect common control with such Person.
- (b) Person shall mean an individual, corporation, partnership, limited partnership, limited liability company, limited liability limited partnership, trust, business trust, association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, governmental authority or other form of entity not specifically listed herein.

Section 7.04 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties.

Section 7.05 Notices. Any notice, request, demand, tender or other communication under this Agreement shall be in writing, and shall be deemed to have been duly given at the time and on the date when personally delivered, or upon the Business Day (as defined below) following delivery to a nationally recognized commercial courier for next day delivery, to the address for each party set forth below, or upon the third (3rd) Business Day after being deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below.

If to the Developer to:

A.G. Commercial, G.P.
P.O. Box 1735
Bristol, Tennessee 37621
Attention: J.J. Gillenwater

If to the IDB:

The Industrial Development Board of the City of Bristol, Tennessee
801 Anderson Street
P.O. Box 1189
Bristol, Tennessee 37621-1189
Attention: Chairman

If to the City:

City of Bristol, Tennessee
801 Anderson Street
P.O. Box 1189
Bristol, Tennessee 37621-1189
Attention: City Manager

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such communication. By giving prior notice to all other parties, any party may designate a different address for receiving notices.

Section 7.06 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee. Venue for any action arising out of this Agreement shall be exclusively in Sullivan County, Tennessee.

Section 7.07 Entire Agreement. This Agreement supersedes all prior discussions and agreements between the City, the IDB and the Developer with respect all matters contained herein. This Agreement contains the sole and entire understanding between the IDB, the City and the Developer with respect to the transactions contemplated by this Agreement.

Section 7.08 Amendment. This Agreement shall not be modified or amended in any respect except by written agreement executed by or on behalf of the parties to this Agreement in the same manner as this Agreement is executed.

Section 7.09 Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.10 Captions. All captions, headings and section and paragraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this

Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement. All references to particular sections, paragraphs or subparagraphs by number refer to the particular section, paragraph or subparagraph so numbered in this Agreement unless reference to another document or instrument is specifically made.

Section 7.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Agreement.

Section 7.12 Expenses. Each party shall promptly pay all of their own costs and expenses incurred in connection with the performance of their obligations under of this Agreement.

Section 7.13 No Government Limitation. This Agreement shall not be construed to bind any other agency or instrumentality of federal, state or local government in the enforcement of any regulation, code or law under its jurisdiction.

Section 7.14 Time of the Essence. Time shall be of the essence in the performance of the terms and conditions of this Agreement.

Section 7.15 Business Days. For purposes of this Agreement, “Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the State of Tennessee. If any date on which performance or notice is due under this Agreement is not a Business Day, performance or notice shall not be due until the next Business Day.

Section 7.16 Definitions. In addition to terms defined elsewhere herein, the following terms, as used in this Agreement, shall have the respective meanings set forth below:

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

CITY OF BRISTOL, TENNESSEE

By: _____
William L. Sorah
City Manager

ATTEST:

City Recorder

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF BRISTOL, TENNESSEE**

By: _____
Chairman

ATTEST:

Secretary

A.G. COMMERCIAL, G.P..

By: _____
Partner

By: _____
Partner

ATTEST:

EXHIBIT A

DESCRIPTION OF PROPERTY

Beginning at a point, said point being the corner of McCroskey's building at the southwest corner of the intersection of Shelby Street and Seventh Street; thence with the west line of Seventh Street, S 01° 46' W a distance of 161.02 feet to another corner of said building, the point of intersection of the northerly line of formerly Crumley Alley with the west line of Seventh Street; thence continuing with the west line of Seventh Street across the mouth of former Crumley Alley (Alley was closed June 15, 1971, as recorded in Minute Book V, Page 286), due south a distance of 8.62 feet to a P.K. Nail set in the center of the said former alley being a common corner to the Coyne International Enterprises Corp. property; thence along the said sideline of Seventh Street, and the side of concrete sidewalk, S 01° 34' W a distance of 165.50 feet more or less to a drill hole; thence continuing along the said sideline of Seventh Street as it curves to the right and intersects with Broad Street, said curve having a radius of 21.96 feet, a delta angle of 89° 40' 42", and an arc length of 34.37 feet to a drill hole; thence continuing along the said sideline of Broad Street, N 88° 46' 40" W a distance of 178.59 feet to a R.R. spike at the back of the sidewalk of Broad Street, the north line of the street; thence with the north line of Broad Street, N 88° 47' W a distance of 67.70 feet to a drill hole in concrete, being a common corner of the Frank Slaughter property; thence with the east line of the Frank Slaughter property, being the west wall of McCroskey's building, N 01° 03' E (passing the McCroskey's building corner at 1.14 feet) a distance of 100.53 feet to a drill hole in the vertical brick wall of McCroskey's building; thence leaving McCroskey's building with Slaughter's north line, N 88° 51' W a distance of 67.73 feet to a R.R. spike at the back of the sidewalk, the east line of Eighth Street, being the back of the sidewalk; thence N 01° 05' E a distance of 89.92 feet to a R.R. spike at the point of intersection of the south line of former Crumley Alley with the east line of Eighth Street; thence crossing the mouth of former Crumley Alley, N 04° 14' E a distance of 20.01 feet to a drill hole in concrete, the north line of the former alley; thence N 01° 03' E a distance of 149.25 feet to an iron pin, the beginning point of a short radius curve connecting the east line of Eighth Street and the south line of Shelby Street; thence by the arc of a curve to the right, having a central angle of 92° 28', a radius of 10.54 feet, and an arc distance of 17.01 feet to a drill hole in concrete, the end point of the curve; thence with the south line of Shelby Street, being the back of the sidewalk, S 86° 29' E a distance of 327.39 feet to the BEGINNING containing 115,646.30 square feet or 2.65 +/- acres – being all of Tax Map 21-H, Group-A, Parcels 33, 34 & 36 and all of former Crumley's Alley closed as stated above. This description was taken from a current field survey being the same land conveyed to the City of Bristol, Tennessee found in Deed Book 3262, Page 1181 and Deed Book 3302. Page 1668.

EXHIBIT B

FORM OF PROMISSORY NOTE

PROMISSORY NOTE

Principal Amount: **\$1,037,382.00**

Bristol, Tennessee
[Date]

FOR VALUE RECEIVED, the undersigned, **A.G. COMMERCIAL, G.P.** a Tennessee general partnership, hereinafter referred to as the “Maker”, promises to pay to the order of **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF BRISTOL, TENNESSEE**, a Tennessee public nonprofit corporation, hereinafter referred to as the “IDB”, at P.O. Box 1189, Bristol, Tennessee 37621, the principal sum of One Million Thirty-Seven Thousand Three Hundred Eighty-Two Dollars (\$1,037,382.00), payable as follows:

1. Principal is payable in five (5) installments of Two Hundred and Seven Thousand, Four Hundred Seventy-Six dollars and Forty cents (\$207,476.40) each, with the installments being due and payable as described in Paragraph 2.
2. In the event Maker timely satisfies the conditions for receiving financial incentives set forth below, then as each such condition is satisfied on the specified date, the IDB, as authorized by Tennessee Code Annotated § 7-53-302(a)(7) and (8), shall exchange and donate to the Maker all of the IDB’s right to receive the particular installment payment due from the Maker, and upon the timely satisfaction of all such conditions this Note shall be deemed to have been satisfied and paid in full. For purposes of this Note, capitalized terms shall have the same meaning given to them in that certain Development Agreement by and among the Maker, the IDB, and the City of Bristol, Tennessee, dated as of August 4, 2021.
 - a. If, on or before December 31, 2021, Maker has completed construction of a parking lot on the southern half of the Property (“completion” of the parking lot meaning that it is paved, striped, and open to the public for parking of vehicles), the IDB will exchange and donate to Maker all of the IDB’s right to receive the first installment payment due under the Note.
 - b. If, on or before August 4, 2022, Maker has entered into preleasing agreements covering fifty percent (50%) of the Commercial Space in the Project, then the IDB will exchange and donate to Maker all of the IDB’s right to receive the second installment payment due from Maker.
 - c. If, on or before February 4, 2023, Maker has entered into preleasing agreements covering seventy-five percent (75%) of the Commercial Space in the Project, then the IDB will exchange and donate to Maker all of the IDB’s right to receive the third installment payment due from Maker.

- d. If, on or before August 4, 2023, Maker has completed footers for Project, then the IDB will exchange and donate to Maker all of the IDB's right to receive the fourth installment payment due from Maker.
 - e. If, on or before August 4, 2024, Certificates of Occupancy have been issued for one hundred percent (100%) of the Commercial Space in the Project, then the IDB will exchange and donate to Maker all of the IDB's right to receive the fifth installment payment due from Maker.
3. If Maker does not meet the deadlines set forth above, the corresponding installment payment shall immediately become due and payable, as set forth in the Development Agreement.
4. In the event of a default in the payment of this Note, and if the Note is placed in the hands of an agent for collection purposes, the Maker agrees to pay all expenses and costs of collection, including reasonable attorneys' fees.
5. The Maker waives demand, presentment, notice of nonpayment, and protest of this Note, and guarantees payment at maturity in accordance with the terms hereof, and the Maker expressly agrees that this note or any payment thereunder may be extended from time to time without in any way affecting the liability thereunder.
6. This Note shall be governed by and construed in accordance with the laws of the State of Tennessee.
7. This Note is secured by a Deed of Trust of even date herewith, delivered to the IDB.

A.G. COMMERCIAL, G.P.

By:
Title:

EXHIBIT C

APPROVED BUILDING PLANS

(see attached)

EXHIBIT D

MINIMUM STANDARDS FOR PROJECT

The Project shall be a minimum of 60,000 square feet of building (including all floors of the Project).

- Upon completion, the Project shall include a minimum of 20,000 square feet of commercial or retail space. A minimum of 10,000 square feet of space in the Project must be devoted to retail, including restaurants, shopping, or entertainments, which generates state and local option sales tax.
- The Project's initial commercial tenants shall include professional offices, such as lawyers or accountants, banking offices, restaurant, and retail that complements such uses. The Developer will not permit any use in the Project that is not appropriate for a first-class retail shopping facility, including pawn shops, adult book and entertainment facilities, tanning salons, check cashing and payday loan facilities and similar types of establishments, regardless of whether such uses are permitted by the applicable zoning ordinance.
- The Project may include residential rental apartments, provided that no residential rental apartments shall be located on the first floor.
- No non-profit entities may own/lease in the Project if the lease is then treated as non-taxable.
- The design of the Project will incorporate a minimum of five (5) of the following elements on walls that front or face streets:
 - Arches;
 - Accent materials that vary from the main construction materials;
 - Awnings, overhangs, or canopies;
 - Landscaping trellises;
 - Dormers, porches or balconies;
 - Street level display windows using clear glass;
 - Varying roof lines, pitches and shapes;
 - Building ornamentation such as columns, pilasters, articulated cornice lines, and brackets; or
 - Building façade modulations such as recessed entryways, horizontal offsets, or protrusions.