

MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding ("MOU") entered into as of July 22, 2013 by and between the Village of Brewster, a municipal entity having an office at Village Hall, 50 Main Street, Brewster, New York 10509 (the "Village"), and Covington Development LLC, a New York limited liability company having an office and principal place of business at 322 Clock Tower Commons, Brewster, New York 10509 ("Covington").

RECITALS

WHEREAS, the Village desires to adopt and undertake a program of urban renewal for certain portions of the Village for the promotion of economic growth and development and for the removal of blighted, substandard, insanitary deteriorated and deteriorating conditions which negatively impact the residents of the Village, their safety, health, morals and welfare, and their property values (the "Project"); and

WHEREAS, the Village desires to proceed with its program of urban renewal by updating its Comprehensive Plan and adopting appropriate amendments to its Zoning Code and Map (collectively, the "CPU") and, in conjunction therewith, adopting a plan for urban renewal consistent with certain other plans and studies which it has obtained, namely a "Blight Determination Study" dated November 2011, prepared by Ferrandino & Associates Inc., a "Niche Marketing Plan" dated March 2009, prepared by E.M. Pemrick & Company, and a plan entitled "Envision Brewster" prepared by Hudson Valley Pattern for Progress Fellows (collectively, the "Studies"), in order to assess existing conditions in the study areas and identify areas which would be appropriate for urban renewal, recommend methods for the revitalization of blighted areas, and promote economic growth of the Village, the maintenance of the historic character of the Village, the removal of existing blighted, substandard and insanitary conditions and generally to benefit the public health, safety and welfare; and

WHEREAS, based on the above plans and studies and pursuant to Article 15 of the General Municipal Law of the State of New York entitled the "Urban Renewal Law", the Village desires to commence the urban renewal process (the "Project") by authorizing the commencement of the CPU process pursuant to and in accordance with the applicable provisions of Article 7 of the Village Law of the State of New York and authorizing Covington, upon completion of the CPU or, at its option, concurrently with the CPU process, to develop a conceptual planning and program analysis (a "Master Development Plan" or "MDP"), subject to the acceptance and approval of the Village, for the redevelopment of those areas of the Village described generally in Schedule "A" which is annexed hereto and hereby made a part hereof (the "Project Area"), with said Area to be subject to revision as may be recommended by the Village following completion of the CPU; and

WHEREAS, following the acceptance and approval of an MDP which is consistent with the CPU and satisfactory to both parties, the Village and Covington will enter into a public-private partnership pursuant to a land acquisition and development agreement ("LADA") setting forth the rights and obligations of the parties for the implementation of the MDP, which agreement shall

include, without limitation by reason of specification, provisions related to (i) site plan approval; (ii) sewer, water and utility supply; (iii) stormwater management; (iv) adoption of legislation, if necessary, to implement the MDP; (v) compliance with the New York State Environmental Quality Review Act ("SEQRA"), 6 NYCRR Part 617 *et seq.*, and any and all other governmental laws, rules and regulations applicable to the Project; and (vi) a plan for the possible acquisition and disposition of lands, including buildings and improvements situated thereon, within the Project Area as necessary or desirable for the implementation of the MDP, including private acquisition of parcels located in the Project Area and the Village's exercise or delegation of the powers of condemnation and eminent domain; and

WHEREAS, the Village and Covington wish that development of the Project Area takes place in a timely and expeditious manner; and

WHEREAS, in furtherance of the above, the Village Board of Trustees has on this date approved this Agreement for execution by the Mayor on behalf of the Village; and

WHEREAS, the Village and Covington recognize and agree that the Village cannot commit itself to any particular outcome, result or actions regarding the Project, which is subject to SEQRA and compliance with all applicable laws and regulations hereunder.

NOW, THEREFORE, in order to accomplish the foregoing purposes, the Village and Covington agree as follows:

1. Urban Renewal Area: Village shall immediately commence the CPU process and, upon completion, will designate the Project Area as an area appropriate for urban renewal pursuant to the requirements set forth in Article 15 of the General Municipal Law of the State of New York (the "GML"). Without limitation by reason of specification, a recommendation from the Village Planning Board to designate the Project Area as appropriate for urban renewal shall be obtained prior to any designation by the Village.
2. Scope of Work. Covington shall have the MDP prepared by its consultants in cooperation with the Village's consultants, at a cost to be paid through private funds and funds as may become available to the Village for the planning and implementation of the Project through public grant funds, which shall be subject to the Village's approval, which approval shall not be unreasonably conditioned, delayed or withheld. The MDP shall be guided by the CPU and the Studies. The Village Board of Trustees and Planning Board shall meet as often as reasonably necessary in connection with the development and approval of the MDP and for the continued discharge of the Village's obligations under Article 15 of the General Municipal Law with regard to the MDP for urban renewal.
3. Development Agreement. Following the approval of the MDP, the Village and Covington shall enter into the LADA setting forth the rights and obligations of the parties with respect to the implementation of the MDP, and, subject to compliance with all applicable provisions of the GML, the Village shall designate Covington as preferred developer and as the

“qualified and eligible sponsor” for the Project pursuant to Section 507(1)(d) of the GML. The LADA shall address, among other things, the following items: (a) necessity and timetables for subsequent municipal Village approvals and outside agency approvals, including NYC DEP, NYSDEC, NYSDOT and the Putnam County Health Department; (b) compliance with SEQRA and other applicable governmental laws, rules and regulations; (c) land acquisition and disposition procedures for the Project Area; (d) allocation of environmental obligations; (e) default provisions; (f) tax obligations; (g) the adoption of legislation to implement the MDP; (h) such other terms and provisions as the parties may deem necessary and prudent.

4. Planning Exclusivity; Term. The Village shall not enter into or offer or agree to enter into (nor shall the Village authorize or direct any representative to act on its behalf in connection with) any negotiation, discussion or agreement with any other firm, person, or other entity with respect to the Project (or any similar project) proposed to be undertaken in the Project Area other than Covington. The Village shall deal exclusively with Covington as the preferred developer in connection with the preparation of the MDP for a twenty-four (24) month period commencing on the effective date of the adoption of the CPU including any Village Zoning Code and Zoning Map amendments as recommended thereby, and terminating on the earlier of (a) the Village’s reasonable determination that Covington is not diligently and in good faith pursuing its obligations hereunder; or (b) the expiration of said 24 month period.
5. Delivery of Notes, Studies, Plans and Reports. Covington agrees to deliver to the Village copies of all of its final studies, plans and reports relating to the Project and the MDP, except for attorney work product and attorney-client privileged communications. Covington shall retain, however, ownership and all associated rights for such product. In the event this MOU or subsequent agreements are terminated or the parties mutually agree not to proceed with the Project, then any further use of such product by the Village shall be strictly by permission of Covington, except for that product which may be non-proprietary in nature.
6. No Extended Rights; Good Faith Commitments. By this MOU, the Village confers no rights upon Covington other than those expressly set forth herein and no commitments can be made for the implementation of an MDP until all necessary approvals are obtained.

The Village covenants in good faith to diligently and reasonably perform its obligations under the MOU, provided that the Village cannot commit to any particular outcome regarding the Project or Project Area under SEQRA, and the respective regulations thereof, and the Village makes no representations as to any approvals with respect to the Project. Based upon the SEQRA findings and other governmental findings and determinations required in connection with the Project, the Project may be modified, reduced in scope or rejected in whole or part, and any covenants, conditions and agreements set forth in the MOU are subject to and conditioned upon compliance with each of such findings and determinations.

7. Village Cooperation; Contact with other Entities. The Village shall cooperate with Covington by making Village staff available to meet and consult with Covington staff, consultants, and

representatives on a timely basis, and assisting Covington in contacting other public or private entities as necessary. Each party shall also do all acts and things, and make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms of this MOU. The Village further agrees to cooperate with and support Covington in, and contribute to, the defense of any action brought in opposition to, or otherwise challenging, the Project or MDP.

8. Governing Law. This MOU shall in all respects be governed by the laws of the State of New York, and all suits, actions or proceedings regarding this Agreement shall be brought only in the State or Federal Courts of New York.
9. Counterparts. This MOU may be signed in counterparts, which taken together, shall form a complete, fully executed agreement. Faxed signatures shall be deemed to be originals.
10. Captions The captions in this MOU are for convenience of reference and in no way define, limit or describe the scope of this MOU and shall not be considered an interpretation of this MOU or any provision hereof.
11. No Third Party Beneficiaries. This MOU is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any right in, or be enforceable by, any other person or entity.
12. Bind and Inure; Assignment. The terms of this MOU are binding upon and inure to the benefit of the parties hereto, their respective representatives, successors and permitted assigns. This MOU may not be assigned by Covington without the consent of Village, which consent shall not be unreasonably conditioned, delayed or withheld, except that in the event of an assignment to a company, firm, limited liability company or other entity in which Covington or any of its members have an interest such consent shall not be required.
13. Further Assurances. Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this MOU.
14. No Amendment Neither this MOU nor any provision hereof may be waived, changed or canceled except in writing signed by both of the parties hereto.
15. Entire Agreement All prior understandings, agreements, representations and warranties, oral or written, between the Village and Covington are merged in this MOU. It completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this MOU.
16. Notices. Any notice, demand, request or other communication which under the terms of this MOU must or may be given or made or served by any of the parties hereto shall be in writing and shall be given or made by mailing the same by certified mail, return receipt requested, express mail, courier or by hand delivery, addressed as follows:

If to Village: Honorable James J. Schoenig, Mayor
50 Main Street
Brewster, New York 10509

With copy to: Village Board of Trustees
50 Main Street
Brewster, New York 10509

Village Planning Board
50 Main Street
Brewster, New York 10509
Attn: David Kulo Jr., Chair

Herodes & Mole, P.C.
Village Counsel
888 Route 6
Mahopac, New York 10541
Attn: Anthony Mole, Esq.

If to Covington: Covington Development LLC
322 Clock Tower Commons
Brewster, New York 10509

With copy to: Hogan & Rossi
3 Starr Ridge Road, Suite 200
Brewster, New York 10509
Attn: Donald M. Rossi, Esq.

Any notice hereunder shall be deemed made when delivered.

17. Termination and Remedies:

- A. Covington: In the event that Covington fails to materially comply with any of the material terms and conditions of this MOU and fails to cure such default within thirty (30) days after written notice from the Village, or, with respect to defaults not reasonably capable of cure within thirty (30) days, fails to commence to cure such default within thirty (30) days or thereafter fails to diligently prosecute such cure, then the Village may in its discretion terminate the MOU, and thereafter neither party shall have any obligations or liabilities to the other.
- B. Village: In the event that the Village willfully defaults under the MOU, then Covington's exclusive remedy shall be either: (i) the Village shall be liable for and shall reimburse to Covington all of Covington's reasonable out-of-pocket expenses in pursuing the Project; or (ii) a lawsuit seeking to compel specific performance by the Village. For purposes of this paragraph, willful default shall include the Village arbitrarily and/or unilaterally terminating this Agreement or revoking the designation of Covington as the preferred developer hereunder without any substantive justification or cause, or taking other deliberate and conscious actions or omissions intended to undermine the spirit and intent of this Agreement. Willful misconduct shall not include, among other things (i) the Village terminating this Agreement in the event of Covington's default hereunder; (ii) the failure of the parties to agree to the final terms

of the LADA after good faith negotiation; (iii) the acts or omissions of any Village employee or elected official outside the scope of his/her employment or statutory legal duty, or with respect to which there is no requisite authorization, and/or (vi) any other good faith action taken by the Village or exercise or performance of any of its legislative, regulatory, policing or permitting functions or obligations in relation to the Project, except as provided hereunder.

18. Paragraph Headings: The descriptive headings for the various paragraphs herein are used for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the date first written above.

Village of Brewster

Covington Development LLC

By: 

James Schoenig, Mayor

By: 

Harold Lepler, Managing Member

**SCHEDULE A
TO
MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE VILLAGE OF BREWSTER
AND
COVINGTON DEVELOPMENT LLC
DATED JULY 12, 2013**

All lands situated in the Village of Brewster, County of Putnam and State of New York fronting on (i) Main Street extending from its intersection with NYS Route 6/202 to its intersection with North Main Street; (ii) Marvin Avenue; (iii) Railroad Avenue; (iv) Oak Street; (v) Merritt Lane; (vi) Wilkes Street; (vii) Progress Street; (viii) Hoyt Street; (ix) Park Street; and (x) Peaceable Hill Road from its intersection with Main Street to its intersection with Stone Ridge Road.