

**AGREEMENT IN LIEU OF TAXES**

This Agreement In Lieu of Taxes (this “Agreement”) is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and among the CITY OF COVINGTON, KENTUCKY (the “City”), the COUNTY OF KENTON, KENTUCKY (the “County”), and AL. NEYER LLC., an Ohio limited liability company, with a principal office at 302 W. Third Street, Suite 800, Cincinnati, Ohio 45202 and URBAN SITES CAPITAL ADVISORS LLC, an Ohio limited liability company, with an address of 1209 Sycamore Street, Cincinnati, Ohio 45202, their successors, assigns and/or transferees (collectively, the “Developer”); (the aforementioned are together referred to as the “Parties”):

**WITNESSETH**

WHEREAS, the Developer plans to acquire property in the City of Covington, Kentucky (as more particularly described in Addendum A hereto, the “Property”), and will adaptively reuse the Property for a mixed-use commercial and market rate multi-family rental residential housing, together with related site amenities (the “Project”); and

WHEREAS, the City has agreed to issue one or more series of its Industrial Building Revenue Bonds (the “Bonds”) to finance the acquisition and construction of the Project, the Property being within a downtown business district as designated by the City, and in conjunction therewith, proposes to enter into this Agreement; and

WHEREAS, the Developer and the City intend to enter into an Inducement Contract, for the City to authorize, issue, and sell the Bonds in an amount specified therein, pursuant to KRS 103.200 through 103.285, to finance the acquisition and construction of the Project; and

WHEREAS, the Bonds will be issued, subject to the terms of a Trust Indenture executed at the time of the issuance and delivery of the Bonds (the "Trust Indenture") which Trust Indenture shall appoint a trustee (the "Trustee") for the administration thereof; and

WHEREAS, the economic incentive to the Developer by virtue of the issuance of the Bonds and the execution and delivery of the Bond Lease is the abatement of real estate *ad valorem* taxes with respect to the Property and the Project; and

WHEREAS, the Developer and the Covington Independent School District (the "School District") will enter into an Agreement In Lieu of Taxes in such form and on such terms as are acceptable to the School District (the "School PILOT Agreement") to establish the Developer's obligation to make payments in lieu of *ad valorem* real estate taxes to the School District with respect to the Property and the Project during the period for which such real estate taxes are abated; and

WHEREAS, it is understood by the Parties that the Kenton County Property Valuation Administrator (the "PVA") is responsible for establishing assessed value of real estate within Kenton County for the purpose of imposing real estate *ad valorem* taxes.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the Parties hereto agree as follows:

1. Recitals. The Parties hereafter confirm and affirm the accuracy of the recitals contained above and those contained herein.
2. Valuation of Property and Project.
  - a. That the valuation of the Property and the Project shall be the fair cash value for the Property and the Project as determined by the PVA,

which shall be set and adjusted in accordance with the PVA's standard practices as the Property and Project are developed and during the term of this Agreement.

b. On or before January 1 of the year immediately following the date upon which a Certificate of Occupancy has been issued for the Project, the Developer shall request that the PVA establish a value for the Property and the Project (the "Constructed Assessment Date"). Developer shall provide a copy of the request to City simultaneous with the request to the PVA.

c. At least 30 days prior to the Constructed Assessment Date, the Developer will provide the PVA and the City with the American Institute of Architect documents and site plans and any related documents requested by the PVA's commercial staff to enable the PVA to establish an assessed value of the Property and the Project.

d. The tax rates for use in calculating the payments in lieu of taxes for the term of this Agreement will be the *ad valorem* real property tax rates in effect for the City for each respective year the Bonds are outstanding. It is understood that the valuation of the Property and the Project may change over time as determined by the PVA.

e. The City, but not the Developer, shall have the right in its discretion to appeal the fair cash assessment of the Property and the Project in accordance with the provisions of KRS Chapter 132.

3. Commencement of Obligations. The Developer will make the payments in lieu of taxes provided for in this Agreement by October 31<sup>st</sup> on an annual basis,

commencing the first full tax year after the Bonds are issued. The payment in lieu of taxes requirements shall be an obligation of the Developer for the Property, improved and unimproved, described in Exhibit A.

4. Issuance of Bonds/Tax Abatement. Upon the issuance of the Bonds, the conveyance of the Property and the Project to the City, and the execution and delivery of the Bond Lease, the Property and the Project will be exempt from real property *ad valorem* taxes pursuant to the provisions of Section 103.285 of the Kentucky Revised Statutes, but shall be subject to the payment obligations as set forth in this Agreement, in the School PILOT Agreement and under the Bond Lease. The term of the exemption of *ad valorem* taxes on the Property and the Project shall be the earlier of (i) twenty (20) years from the date the Bonds are issued, or (ii) the date the Bonds are fully paid or defeased.

5. Obligation to Make PILOT Payments. The Developer shall pay to:

a. The City an annual amount equal to twenty percent (20%) of the amount that the City would have received with respect to the Property and the Project, as determined by the PVA, and as applied to the City's then-current real property *ad valorem* tax rate, for the respective tax year, but for the abatement or exemption of the Property and the Project (the "City PILOT Payment").

b. Notwithstanding any other provision of this Agreement and the PVA's fair cash value of the Property and the Project for the tax years after the Bonds are issued, until the calendar year after the certificate of occupancy

for the Project has been issued, the tax value of the Property and the Project for computation of the City PILOT Payment shall be \$13,700,000.

c. During the term of the Bonds, the County agrees that it will receive no PILOT Payment, and joins as a party to this Agreement to confirm that understanding.

6. Ad Valorem Taxes After Bonds Mature. Upon the earlier of the dates on which the Bonds mature or the date on which the Bonds are no longer outstanding, the Developer will pay to the City, the County and the School District (and other taxing authorities) *ad valorem* taxes on the Property and the Project at the tax rates established at that time on an annual basis in accordance with the assessments on the Property and the Project as determined by the PVA.

7. Other Taxes. Other than the *ad valorem* taxes discussed herein, this Agreement does not affect or apply to any other taxes or fees that may be owed by the Developer (or its assignees or transferees) to the City, the County, the School District or any other taxing authority. The Developer acknowledges that this Agreement will not be inconsistent or will not conflict with the Bond Purchase Agreement, the Trust Indenture, or the Bond Lease, and to the extent that this Agreement is inconsistent or in conflict with these documents, the terms and language of this Agreement shall control over those documents.

8. Term of Bonds. It is further understood by the Parties that the final maturity date of the Bonds shall not exceed twenty (20) years from their date of issuance.

9. Assignment. This Agreement shall not be assignable or transferable without the prior written approval of the City, which approval shall not be unreasonably

withheld, conditioned or delayed, so long as all City PILOT Payments due and owing hereunder made at the time of such assignment and the third-party assignee has, in City's reasonable determination, comparable experience and financial capacity as the Developer with the ownership and operation of mixed-use commercial/residential projects, and agrees to assume all of the City PILOT Payment and related obligations for the Property, the Project and the Bonds, including but not limited to the payment obligations under the School PILOT Agreement.

In addition, Developer shall have the right to assign this Agreement or any part hereof, to a special purpose entity established by Developer to undertake the Project, to an "Affiliate", or to any Lender that may provide financing to construct the Project, provided the assignee shall assume all assigned liabilities, obligations of the Developer hereunder. In this section "Affiliate" shall mean a corporation or other entity controlled by, controlling or under common control of the Developer.

10. Effect of Bankruptcy. In the event that the Developer or its assigns shall file a voluntary action seeking relief under applicable bankruptcy laws, or have an involuntary action filed against it seeking such relief, then and in that event, it is agreed that all payments required by this Agreement shall be treated the same as if they were *ad valorem* taxes under applicable Kentucky law, giving said payments and obligations preference over all other secured and unsecured creditors.

11. Notices.

All notices sent to the Developer shall be sent to:

Al. Neyer, LLC  
302 W. Third Street, Suite 800  
Cincinnati, Ohio 45202  
Attn: Leslie Koth, SVP Legal Services

and

Urban Sites Capital Advisors LLC  
1209 Sycamore Street  
Cincinnati, Ohio 45202  
Attn: Daniel Lipson

All notices sent to the City shall be sent to:

City of Covington, Kentucky  
20 West Pike Street  
Covington, Kentucky 41011  
Attn: City Manager with copy to City Solicitor

All notices sent to the County shall be sent to:

County of Kenton, Kentucky  
1840 Simon Kenton Way  
Covington, Kentucky 41011  
Attn: County Judge/Executive

Any default notice shall also be sent to the School District:

Covington Independent School District  
25 East 7<sup>th</sup> Street  
Covington, Kentucky 41011  
Attn: Superintendent

12. Modification. This Agreement may not be changed orally, but only by an agreement in writing executed by the Parties.

13. Default. In the event of default in payment as required herein to the City or as required under the School PILOT Agreement to the School District, or either, which is not cured by the Developer within thirty (30) days, then and in that event, it is agreed that this Agreement and the School PILOT Agreement shall become null and void as of the tax year of the default in payment, and that from that point on, the Developer shall pay an amount equal to one hundred (100%) percent of the amount of ad valorem property tax payments that the City, the School District, the County and any other applicable taxing jurisdiction would have derived from the Property and the Project but for the exemption

of the Property and the Project from ad valorem real property taxation pursuant to the provisions of Section 103.285 of the Kentucky Revised Statutes. It is further agreed that Developer will pay all costs of collections, including the City's costs of collection and reasonable attorney fees hereunder, in the event of default.

14. Legally Binding. This Agreement is legally binding upon the City, the County, and the Developer, its officers, affiliates, shareholders successors in interests, employees, and agents, and assigns and transferees.

15. Governing Law and Jurisdiction. The Parties agree that this Agreement is governed by the laws of the Commonwealth of Kentucky. Any action taken by the Parties or Trustee to enforce or seek relief from the terms and conditions of this Agreement shall be brought in the Kenton Circuit Court.

16. Entire Agreement. This Agreement contains the entire agreement of the Parties hereto in respect to the transaction contemplated hereby and all prior agreements, whether oral or written, are superseded hereby.

17. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if any provision herein shall be deemed to be invalid such provision shall be ineffective to the extent of such invalidity without invalidating the remainder of the provisions contained in this Agreement.

18. Authorization. The Parties hereto represent that each is duly authorized and empowered to enter into this Agreement.

19. Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original.

Signature Page to Agreement In Lieu of Taxes

CITY OF COVINGTON, KENTUCKY

By: \_\_\_\_\_  
Hon. Joseph U. Meyer, Mayor

COUNTY OF KENTON, KENTUCKY

By: \_\_\_\_\_  
Kris Knochelmann,  
Kenton County Judge/Executive

DEVELOPER:

AL.NEYER, LLC,  
an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

URBAN SITES CAPITAL ADVISORS LLC,  
an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Addendum A to PILOT Agreement**

PROPERTY DESCRIPTION

Group: 1616  
PIDN: 054-14-06-001.00  
Address: 303 Court Street  
Covington, Kentucky 41011

Beginning at the intersection of the southerly line of Third Street and the easterly line of Scott Street; thence eastwardly along the said southerly line of Third Street one hundred sixty-eight (168) feet, more or less, to the westerly line of Short Street (formerly Market Street); thence southwardly along the said westerly line of Short Street one hundred forty-eight (148) feet to the northerly line of Market Space one hundred sixty-eight (168) feet to the easterly line of Scott Street; thence northwardly along the said easterly line of Scott Street one hundred forty-eight (148) feet to the point of beginning.

Also conveyed herewith is all of the Grantors' right, title and interest in and to that portion of the real estate closed as a public way by Order of the Kenton Circuit Court in Case No. 85-CI-1650 and described in Encumbrance Book 42, Page 559 of the Kenton County Clerk's Records.