

**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 EDGEWOOD, KENTUCKY (the “City”), the COUNTY OF KENTON, KENTUCKY (the “County”), the ERLANGER/ELSMERE INDEPENDENT SCHOOL DISTRICT (the “School District”), and AL. NEYER, LLC, an Ohio limited liability company, its 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 Edgewood, Kentucky (as more particularly described in Exhibit A hereto, the “Property”), and will construct thereon a medical office building, together with related site amenities (the “Project”); and

WHEREAS, the City has agreed to issue 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, the Project being located within a commercial corridor along Dixie Highway, and in conjunction therewith proposes to enter into this Agreement; and

WHEREAS, the Developer and the City have entered 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 is the abatement of real estate *ad valorem* taxes with respect to the Project; 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 Project.
  - a. That the valuation of the Project shall be the fair cash value for the Project as determined by the PVA, which shall be set and adjusted in accordance with the PVA’s standard practices as the Project is developed and during the term of this Agreement.
  - b. 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, the School District and the County for each respective

year the Bonds are outstanding. It is understood that the valuation of the Project may change over time as determined by the PVA.

3. Commencement of Obligations. The obligation to make payments in lieu of taxes will commence on the earlier of (i) November 30<sup>th</sup> the year after the date the Bonds are issued, or (ii) November 30<sup>th</sup> of the first calendar year after the Project has been transferred to the County, and shall be due each November 30<sup>th</sup> thereafter during the term of the Bonds, and shall be the obligation of the Developer of the Property, improved and unimproved, described in Exhibit A.

4. Issuance of Bonds/Tax Abatement. Upon the issuance of the Bonds, 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. The term of the exemption of *ad valorem* taxes on the Project shall be the earlier of (i) thirty (30) 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 sixty percent (60%) of the amount that the City would have received, as determined by the PVA , and as applied to the applicable City's real *ad valorem* tax rate, for the respective tax year, but for the abatement or exemption (the "City PILOT Payment").

b. the School District an amount equal to sixty percent (60%) of the amount that the School District would have received, as determined by the PVA, and as applied to the applicable School District's real *ad valorem* tax

rate, for the respective tax year but for the abatement or exemption (the “School District PILOT Payment.

c. the County an amount equal to sixty percent (60%) of the amount that the County would have received, as determined by the PVA, and as applied to the applicable County real *ad valorem* tax rate, for the respective tax year but for the abatement or exemption (the “County PILOT Payment”).

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 School District, the City, and the County (and other taxing authorities) *ad valorem* taxes on their respective housing units at the tax rates established at that time on an annual basis in accordance with the assessments on each unit 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 other Parties.

8. Term of Bonds. It is further understood by the Parties that the final maturity date of the Bonds shall not exceed thirty (30) years from their date of issuance.

9. Assignment. This Agreement may be assigned by the Developer without the consent of the other Parties. In the event of an assignment, the Developer shall, as part of the assignment, require that the assignee execute an assumption agreement, assuming all obligations of the Developer under this Agreement. Prior to any effective

date of the assignment, Developer shall warrant that it is current on all payments owed to the School District, the County and the City under this Agreement.

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 West Third Street, Suite 800  
Cincinnati, Ohio 45202

All notices sent to the City shall be sent to:

City of Edgewood, Kentucky  
385 Dudley Road  
Edgewood, Kentucky 41017  
Attn: Mayor

All notices sent to the School District shall be sent to:

Erlanger/Elsmere Independent School District  
500 Graves Avenue  
Erlanger, Kentucky 41018  
Attn: Superintendent

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

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

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

14. 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.

15. 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.

16. 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.

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

18. 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 EDGEWOOD, KENTUCKY

By: \_\_\_\_\_  
Mayor

COUNTY OF KENTON, KENTUCKY

By: \_\_\_\_\_  
County Judge/Executive

ERLANGER/ELSMERE INDEPENDENT SCHOOL DISTRICT

By: \_\_\_\_\_  
Superintendent

AL. NEYER, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

# EXHIBIT A

