

AGREEMENT IN LIEU OF TAXES

135 W. 38th Street, Covington, Kentucky 41011

This Agreement In Lieu of Taxes (this “**Agreement**”) is made effective as of the ____ day of _____, 2023 (the “**Effective Date**”), by and among the **CITY OF COVINGTON, KENTUCKY**, a Kentucky city of the Home Rule Class (the “**City**”), the **COUNTY OF KENTON, KENTUCKY**, a Kentucky County (the “**County**”), and the **COVINGTON INDEPENDENT SCHOOL DISTRICT** (the “**School District**”), and **LATONIA BULK LLC**, a Kentucky limited liability company, its successors, assigns and/or transferees (collectively the “**Developer**” and, together with the City, the “**Parties**”):

WITNESSES’:

WHEREAS, the Developer has acquired real property in the City of Covington, Kentucky (as more particularly described in Exhibit A hereto, the “**Property**”), and will construct thereon one or more industrial buildings, together with related site amenities (the “**Project**”) in accordance with the approved plans attached as Exhibit B to that certain Development Agreement entered into by and between the City and the Developer (the “**Development Agreement**”); and

WHEREAS, the City has agreed to issue its Industrial Building Revenue Bonds (the “**Bonds**”) pursuant to KRS 103.200 through 103.285, to finance the acquisition and construction of the Project, and in conjunction therewith proposes to enter into this Agreement; and

WHEREAS, the Bonds will be issued, subject to the terms of a Bond Purchase Agreement executed at the time of the issuance and delivery of the Bonds (the “**BPA**”) which BPA shall appoint a servicing agent 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 Lease Agreement executed at the time of the issuance and delivery of the Bonds (the “**Bond Lease**”) is the abatement of real estate *ad valorem* taxes with respect to the Property and the Project; and

WHEREAS, it is understood by the Parties that the Kenton County Property Valuation Administrator (the “PVA”) is responsible for establishing the 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 thirty (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 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 December 15th 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 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) fifteen (15) years from the date the Bonds are issued, or (ii) the date the Bonds are fully paid or defeased.

5. Construction Period PILOT Payments. From the date that the Bonds are issued and sold until the sooner to occur of (i) the execution of the first Project sublease, or (ii) the two-year anniversary of such the Bond closing date, the Developer will pay to each of the City, the County and the School District a construction period payments in lieu of taxes (each a “**Construction Period PILOT Payment**”) in an amount equal to 60% of the *ad valorem* real property taxes that would have otherwise been payable to each jurisdiction with respect to the Property and the Project for the then-current calendar year.

6. Obligation to Make Post-Construction PILOT Payments. Commencing on January 1 of the first calendar following the expiration of the Construction Period PILOT Payment obligation, the Developer shall make annual payments to each of the City, the County and the School District

in lieu of taxes based upon a pilot tax invoices to be prepared and issued by each taxing jurisdiction in the amounts to be determined as follows:

a. To the City, 100% of the *ad valorem* real property taxes that would have otherwise been payable to the City with respect to the Property and the Project for the then-current calendar year, less the corresponding PILOT Percentage Reduction (as defined herein) based upon the amount of the Developer's Annual Payroll (as defined herein) as set forth in the table in subsection (d) below ("**City PILOT Payment**").

b. To the County, 100% of the *ad valorem* real property taxes that would have otherwise been payable to the County with respect to the Property and the Project for the then-current calendar year, less the corresponding PILOT Percentage Reduction based upon the amount of the Developer's Annual Payroll as set forth in the table in subsection (d) below ("**County PILOT Payment**").

c. To the School District, 100% of the *ad valorem* real property taxes that would have otherwise been payable to the County with respect to the Property and the Project for the then-current calendar year, less the corresponding PILOT Percentage Reduction based upon the Developer's Annual Payroll as set forth in the table in subsection (d) below ("**School PILOT Payment**", together with the City PILOT Payment and the County PILOT Payment, the "**Post-Completion PILOT Payments**" and, together with the Construction Period PILOT Payments, the "**PILOT Payments**").

d. For purposes of the Post-Completion PILOT Payments, "**Annual Payroll**" shall mean the gross payroll generated from the Project during the term of this Agreement as documented by the Developer in the Annual Project Report (defined herein) and verified by the City. It being understood that "Annual Payroll" excludes

any portion of payroll that is attributable to a rebate or abatement through state and local incentive programs.

PILOT Percentage Reduction	Annual Payroll
0%	Up to \$2,000,000
40%	\$2,000,001 to \$2,999,999
50%	\$3,000,000 to \$3,999,999
60%	\$4,000,000 to \$4,499,999
80%	Over \$5,500,000

7. Annual Project Report. To facilitate any PILOT Percentage Reduction, the Developer covenants and agrees to deliver to each of the City, the County and the School District by no later than October 1 of each calendar year, an annual Project jobs report (the “**Annual Project Report**”) for the twelve month period commencing on September 1 of the prior year through August 31 of the then-current year substantially in a form developed by the City containing the following information: (i) the identity of the business(es) operating at the Project, (ii) the total salaries, wages, commission and other compensation paid to all employees at each business during the reporting period within the City, and (iii) supporting documentation in the form of monthly occupational license returns filed with the City during the corresponding twelve month period. The Developer acknowledges and agrees that the failure to timely complete and return the Annual Project Report will result in the inability of the Developer to secure a PILOT Percentage Reduction for the corresponding year and that each of the City, the County and the School District shall be entitled to invoice the Developer for a 100% PILOT Payment during any such year.

8. 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* real property 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.

9. 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 BPA 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.

10. Term of Bonds. It is further understood by the Parties that the final maturity date of the Bonds shall not exceed fifteen (15) years from their date of issuance.

11. 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 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. For all assignments, the assignee shall execute an assumption agreement, assuming all obligations of the Developer under and agrees to assume all of the PILOT Payments and related obligations for the Property, the Project and the Bonds. Developer shall warrant that it is current on all payments owed to the School District, the County, and the City.

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.

12. 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.

13. Notices.

All notices sent to the Developer shall be sent to:

Latonia Bulk LLC
121 E 4th Street
Covington, KY 41011
Attn: Josh Niederhelfman

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

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

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

16. Default. In the event of default in payment of the PILOT Payments as required hereunder, which is not cured by the Developer within thirty (30) days of receipt of written notice of such default, then, at the option of the City exercised by written notice to Developer, the PILOT Payment(s) 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* real property tax

payments attributable to the Property and the Project that would otherwise be due to the City, County and School District. It is further agreed that Developer will pay all costs of collections, including the City's reasonable attorney fees, in the event of default.

17. 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 Kenton Circuit Court.

18. 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.

19. 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.

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

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

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IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

CITY:

CITY OF COVINGTON, KENTUCKY

By: _____
Joseph U. Meyer, Mayor

COUNTY:

COUNTY OF KENTON, KENTUCKY

BY: _____
Kris Knochermann, Judge Executive

SCHOOL DISTRICT:

COVINGTON INDEPENDENT SCHOOL DISTRICT

BY: _____

DEVELOPER:

LATONIA BULK LLC

By: _____

Name: _____

Its: _____

[Signature Page to Agreement in Lieu of Taxes]

EXHIBIT A

SITUATE IN COMMONWEALTH OF KENTUCKY, COUNTY OF KENTON, CITY OF COVINGTON, BEING TO-WIT:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 38TH STREET SOUTH 83 DEGREES 54' EAST 223.16 FEET OF THE INTERSECTION OF THE SOUTHERLY LINE OF 38TH STREET AND THE SOUTHEASTERLY RIGHT-OF-WAY OF THE LOUISVILLE & NASHVILLE RAILROAD COMPANY; THENCE SOUTH 22 DEGREES 39' WEST ALONG THE EASTERLY LINE OF THE ONE ACRE TRACT OF LAND TO BE SOLD TO THE LIBERTY CHERRY AND FRUIT COMPANY 169.56 FEET TO A POINT; THENCE NORTH 83 DEGREES 54' WEST ALONG A LINE PARALLEL TO AND 162.53 FEET FROM AND AT RIGHT ANGLES TO THE SOUTHERLY LINE OF 38TH STREET 312.86 FEET TO A POINT IN THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, SAID LAST DESCRIBED LINE BEING THE SOUTHERLY LINE OF THE ONE ACRE TRACT TO BE SOLD TO THE LIBERTY CHERRY & FRUIT COMPANY; THENCE SOUTH 46 DEGREES 26' WEST ALONG THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SAID LOUISVILLE & NASHVILLE ROADWAY COMPANY 500.09 FEET TO A POINT; 43 DEGREES 34' EAST 603.05 FEET TO A POINT IN THE WESTERLY PROPERTY LINE OF THE LATONIA SHOPPING CENTER PROPERTY 974.42 FEET TO A POINT IN THE SOUTHERLY LINE OF 38TH STREET; THENCE NORTH 83 DEGREES, 54' WEST ALONG THE SOUTHERLY LINE OF 38TH STREET 52.16 FEET TO THE PLACE OF BEGINNING AND BEING PART OF THE SAME PROPERTY CONVEYED TO THE CITY OF COVINGTON BY LEON SCHOTTENSTEIN, ALVIN SCHOTTENSTEIN AND JAMES SHOTTENSTEIN AS RECORDED IN DEED BOOK NO. 514, PAGE 202 OF THE KENTON COUNTY CLERK'S RECORDS AT COVINGTON, KENTUCKY, AND BEING 6.889 ACRES, MORE OR LESS.

PIDN: 056-14-11-006.00

GROUP NO. 3161, 3163 & 3164

ALSO KNOWN AS: (Surveyor's legal)

A CERTAIN TRACT OF LAND IN THE COMMONWEALTH OF KENTUCKY, THE COUNTY OF KENTON, WITHIN THE CITY OF COVINGTON, BOUND ON THE WEST BY LOUISVILLE AND NASHVILLE RAILROAD, ON THE NORTH BY THE LANDS OF THE TRUSTEES OF CALVARY BAPTIST CHURCH (DEED BOOK 689 PAGE 76), ON THE EAST BY THE LANDS OF SCHOTTENSTEIN TRUSTEES (DEED BOOK 887 PAGE 224) AND ON THE SOUTH BY THE LANDS OF GARY L. WILBURN & MADELINE E. WILBURN (DEED BOOK 868 PAGE 9) AND THE LANDS OF OVERHEAD DOOR CORPORATION (DEED BOOK 535 PAGE 687) AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL REFERENCES BELOW TO A SET PIN AND CAP INDICATES A 1/2" IRON PIN AND YELLOW CAP, PLS 349. ALL REFERENCES BELOW TO A SET PIN AND WITNESS CAP INDICATES A 1/2" IRON PIN AND YELLOW CAP, STAMPED WITNESS. ALL DEED BOOK REFERENCES ARE OF RECORD AT THE COUNTY CLERK'S OFFICE IN THE KENTON COUNTY RECORDS ROOM IN COVINGTON, KENTUCKY. THE SOURCE OF BEARINGS OR THIS DESCRIPTION IS BASED UPON THE SUBJECT DEED BEING DEED BOOK C3168, PAGE 267, MORE PARTICULARLY THE WEST LINE BEARING NORTH 46°26'00".

BEGINNING AT A SET IRON PIN AND CAP IN THE SOUTHERN RIGHT OF WAY OF WEST 38TH STREET AT THE NORTH EAST CORNER OF THE LANDS OF THE TRUSTEES OF CALVARY BAPTIST CHURCH'S 1 ACRE PARCEL ON THE SOUTH SIDE OF WEST 38TH STREET AND THE NORTHWEST CORNER OF THE 50 FOOT PANHANDLE OF THE PROPERTY HEREIN DESCRIBED.

THENCE, LEAVING THE LANDS OF THE TRUSTEES OF CALVARY BAPTIST CHURCH AND CONTINUING ALONG THE RIGHT OF WAY OF WEST 38TH STREET SOUTH 83°34'00" EAST 52.16 FEET TO A SET IRON PIN AND CAP AT THE NORTH EAST CORNER OF SAID 50 FOOT PANHANDLE AND THE NORTHWEST CORNER OF THE LANDS OF SCHOTTENSTEIN TRUSTEES.

THENCE, LEAVING THE RIGHT OF WAY OF WEST 38TH STREET AND CONTINUING ALONG THE WEST LINE OF SAID SCHOTTENSTEIN, SOUTH 22°39'00" WEST 974.24 FEET TO A FOUND 1/2" IRON PIN AND CAP, PLS 1781 IN THE NORTH LINE OF THE LANDS OF GARY L. WILBURN AND MADELINE WILBURN, SAID POINT ALSO BEING NORTH 43°34'00" WEST, 7.17 FEET FROM A FOUND 1/2" IRON PIN AND CAP, PLS 1781 AT THE LANDS OF THE SOHIO PETROLEUM COMPANY (DEED BOOK 588 PAGE 715).

THENCE, LEAVING THE LANDS OF SCHOTTENSTEIN AND CONTINUING ALONG THE LANDS OF GARY L. WILBURN AND MADELINE E. WILBURN, AND THE LANDS OF THE OVERHEAD DOOR COMPANY, NORTH 43°34'00" WEST, 602.76 FEET TO A FOUND 1/2" IRON PIN AND CAP, PLS 2030 IN THE EASTERLY RIGHT OF WAY OF THE LOUISVILLE AND NASHVILLE RAILROAD AND THE NORTHWEST CORNER OF THE LANDS OF THE OVERHEAD DOOR COMPANY, PASSING A FOUND 1/2" IRON PIN AND CAP, PLS 2030 AT THE NORTH CORNER OF WILBURN AND THE OVERHEAD DOOR COMPANY AT 142.60'.

THENCE, LEAVING THE LANDS OF THE OVERHEAD DOOR COMPANY AND CONTINUING ALONG THE RIGHTS OF WAY OF THE LOUISVILLE AND NASHVILLE RAILROAD, NORTH 46°26'00" EAST 500.09 FEET, TO A POINT, SAID POINT WITNESS BY A SET 1/2" IRON PIN AND WITNESS CAP BEARING SOUTH 18°44'01" EAST 3.00 FEET.

THENCE, LEAVING THE RIGHT OF WAY OF SAID RAILROAD AND CONTINUING ALONG THE SOUTH LINE OF THE LANDS OF THE TRUSTEES OF CALVARY BAPTIST CHURCH, SOUTH 83°34'00" EAST, 312.86 FEET, TO A FOUND 1/2" PIN, NO CAP.

THENCE, CONTINUING ALONG THE LANDS OF THE TRUSTEES OF CALVARY BAPTIST CHURCH, NORTH 22°39'00" WEST, 169.56 FEET, TO THE POINT OF BEGINNING.

THIS DESCRIPTION WAS PREPARED BY AND ACCORDING TO A SURVEY PERFORMED BY RANDALL E. LONG, PLS #3494, WITH RIEGLER ENGINEERING, LLC IN OCTOBER 2006.

Subject to easements, restrictions and covenants of record.