

RESOLUTION NO. \_\_\_\_\_ - 2021

**A RESOLUTION OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, GIVING PRELIMINARY APPROVAL OF AN INDUSTRIAL REVENUE BOND FINANCING FOR ASTANA LLC, AND ANY AFFILIATES OR ASSIGNEES THEREOF; AUTHORIZING INITIATION OF THE ACQUISITION, CONSTRUCTION, EQUIPPING, AND INSTALLATION OF AN INDUSTRIAL PROJECT; AGREEING TO UNDERTAKE THE ISSUANCE OF ONE OR MORE SERIES OF INDUSTRIAL REVENUE BONDS AT THE APPROPRIATE TIME OR TIMES; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT AND PAYMENT IN LIEU OF TAXES AGREEMENT IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND TAKING OTHER PRELIMINARY ACTIONS.**

**WHEREAS**, the Council of the Lexington-Fayette Urban County Government (the "*Issuer*"), has determined that the Issuer may assist Astana LLC, a Kentucky limited liability company, its affiliates and assigns (collectively, the "*Company*"), by pursuing the acquisition, construction, equipping, and installation of the Speigle Heights Redevelopment Project, an industrial project of the Company consisting of the facilities and properties described in **EXHIBIT A** attached hereto (collectively, the "*Project*"), and by entering into, at the appropriate time, a lease agreement with the Company (the "*Lease Agreement*") pertaining to the Project, all pursuant to the authority of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes ("*KRS*"), as amended (the "*Act*"), and in furtherance of the purposes of the Act and the ensuing public benefit to the residents of the Issuer and its environs, the Lease Agreement to be upon terms and conditions as the Act may require and as the Issuer may deem acceptable; and

**WHEREAS**, the Company has represented to the Issuer that the acquisition, construction, equipping, and installation of the Project, if acquired, constructed, equipped, and installed, will result in new job opportunities within the environs of the Issuer; and

**WHEREAS**, the Issuer is authorized by the Act to issue its industrial revenue bonds for the purpose of defraying the costs of acquiring, constructing, equipping, and installing "industrial building" facilities, which term means all real and personal properties suitable for the Project, including land, buildings, fixtures and equipment; discussions have occurred between representatives of the Company and the Issuer regarding the issuance of industrial revenue bonds by the Issuer to finance the Company's Project; it is the intention of the Issuer, and the Issuer has agreed and hereby agrees with the Company, to issue such industrial revenue bonds upon compliance by the Company with such reasonable conditions and obligations as the Issuer may require and documents incident to such bond issue or issues and upon the agreement of the Company to pay the reasonable costs and expenses of the Issuer related to or arising from such issuance from bond proceeds or other sources; and the Issuer has authorized the Company to proceed with the initiation of the acquisition, construction, equipping, and installation of the Project, subject to reimbursement of the costs of such acquisition, construction, equipping, and installation from the proceeds of the industrial revenue bonds, as and when issued; and

**WHEREAS**, based upon the Company's present estimate of the aggregate costs of the Project together with a reasonable allowance for contingencies and incidental costs, the Issuer proposes to issue its industrial revenue bonds in an aggregate stated principal amount up to \$39,000,000, for a term of up to forty (40) years, to pay the costs of the acquisition of the Project (the "**Bonds**"), including costs incident to the authorization, sale, and issuance of the Bonds and other financing costs, with the understanding that such amount may be increased by subsequent official action of the Issuer upon the Company's request; and the Bonds will be payable solely from payments to be made by the Company under the Lease Agreement and will not be payable from any funds or assets of the Issuer whatsoever; and

**WHEREAS**, due to the Project's location within the development area created by Resolution 100-83, the benefit to that area, and the other unique aspects of the Project, the Issuer is willing to suspend the operation of certain provisions of Ordinance No. 203-80 and the Industrial Revenue/Housing Bonds Policies and Guidelines of the Lexington-Fayette Urban County Government, ratified in Ordinance No. 52-94, which prohibit the Issuer from taking title to property and leasing it back to companies/developers in order to obtain relief from ad valorem taxes typically paid on the improved property; and

**WHEREAS**, the Issuer proposes to enter into the Lease Agreement with the Company at the appropriate time under which the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of and premium, if any, and interest on the Bonds together with all trustee, paying agent, and servicing agent's fees in connection with the Bonds and any other related charges as the same come due and payable; and

**WHEREAS**, to evidence the Issuer and the Company's preliminary agreement regarding these matters the parties propose to enter into a Memorandum of Agreement substantially in the form set out in **EXHIBIT B** attached hereto (the "**Memorandum of Agreement**"), and to approve the form of the Payment in Lieu of Taxes Agreement substantially in the form set out in **EXHIBIT C** attached hereto (the "**PILOT Agreement**").

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE COUNCIL OF THE URBAN COUNTY GOVERNMENT, AS FOLLOWS:**

**Section 1.** It is hereby found, determined, and declared that the recitals set forth above are hereby incorporated in this Section 1 by reference.

**Section 2.** It is found, determined, and declared that (a) the recitals set forth in the preambles to this Resolution, which are incorporated in this Section 1 by reference, are true and correct; (b) the amount of money necessary to be provided by the Issuer through the issuance of the Bonds for the acquisition, construction, installation, and equipping of the Project will be an aggregate amount up to \$39,000,000, the Bonds to have a term of up to forty (40) years; (c) the Company has represented it intends to have sufficient financial resources to acquire, construct, install, and equip the Project and to place it in operation and to continue to operate, maintain, and insure the Project throughout the term of the Bonds, meeting when due the obligations of the Lease Agreement; and (d) sufficient safeguards shall be provided by the Lease Agreement to

insure that all money provided by the Issuer from the proceeds of the sale of the Bonds will be expended, by way of direct expenditure or reimbursement, solely and only for the purposes of the Project financed thereby.

**Section 3.** It is hereby found, determined, and declared that (a) the costs of acquiring, constructing, installing, and equipping the Project will be paid out of the proceeds of the Bonds, such proceeds to be supplemented by contributions of the Company as may be necessary to complete the Company's respective Project; (b) none of the Bonds will be general obligations of the Issuer; (c) neither the Bonds nor the interest thereon shall constitute or give rise to any pecuniary liability whatsoever of the Issuer or any charge against its general credit or taxing power; (d) the Bonds and the payment of interest thereon shall be secured and payable solely by a pledge of amounts to be paid by the Company or otherwise to be available under the Lease Agreement; (e) no part of said costs will be payable out of any general funds, assets, properties, or other contributions of the Issuer; (f) the Issuer shall sell the Bonds only to the Company or an affiliated entity or assignee thereof; and (g) the Company shall pay the fees of the Issuer related to the issuance of the Bonds as specified in Ordinance 21-2021.

**Section 4.** The acquisition, construction, installation, and equipping of the Project may be initiated and undertaken or caused to be initiated and undertaken by the Company forthwith, and the Company is authorized to formulate and develop plans and specifications for the Project and to enter into such contracts and undertakings as may be required for the acquisition, construction, installation, and equipping of the Project. Payments or reimbursements to or on behalf of the Company after the receipt of the proceeds of the sale of the Bonds by the Issuer shall be made as set out in the Lease Agreement.

**Section 5.** The Project constitutes an "industrial building" as provided in KRS 103.200(1)(k) and, being located in the Downtown Development District identified by the Issuer in Resolution No. 100-83, as provided in KRS 103.200(1)(n).

**Section 6.** The Company has requested, and the Issuer hereby approves, the employment of Stoll Keenon Ogden PLLC as "Bond Counsel." Bond Counsel is authorized and directed to take any other legal action necessary or appropriate in connection with the issuance of the Bonds.

**Section 7.** The Company is authorized and directed to take any other legal action necessary and customary in order to satisfy any prerequisites to the issuance of the Bonds. Counsel for the Issuer and its officers and officials are authorized and requested to assist the Company in any appropriate manner.

**Section 8.** The Memorandum of Agreement attached hereto as **EXHIBIT B** is hereby approved and the Mayor is hereby authorized to execute the Memorandum of Agreement on the Issuer's behalf. With notice to and approval from the Issuer, the Company may assign its rights hereunder by assigning the Memorandum of Agreement.

**Section 9.** It is hereby acknowledged and agreed that the form of the PILOT Agreement attached hereto as **EXHIBIT C** describes the agreement reached between the Issuer and the Company's representatives regarding the Company's obligations to make payments in lieu of taxes while the Bonds are outstanding and that upon the issuance of the Bonds, the Issuer shall direct its Mayor or its other authorized officials to execute a PILOT Agreement or PILOT Agreements each in the form attached hereto with such changes or revisions as are necessary to reflect the date, par, designation, maturity, and interest rate or rates applicable to the Bonds.

**Section 10.** No funds of the Issuer shall be expended for the costs of issuance of the Bonds or for the costs of the Project, except such as are derived from Bond proceeds.

**Section 11.** All resolutions, municipal orders, and other official actions of the Issuer or parts thereof in conflict herewith are, to the extent of such conflict, hereby rescinded.

**Section 12.** This Resolution shall be in full force and effect from and after its adoption.

*[Signature Page To Follow]*

[SIGNATURE PAGE TO INDUCEMENT RESOLUTION]

ADOPTED by the Fiscal Court of the County of Marion, Kentucky, at a meeting held on \_\_\_\_\_, 2021.

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Linda Gorton  
Mayor

Attest:

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Clerk, Urban County Council

**CERTIFICATION**

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the Council of the Lexington-Fayette Urban County Government (the "*Issuer*"), and as such I further certify that the foregoing (with the attached **EXHIBITS A, B, and C**), is a true, correct, and complete copy of a Resolution duly adopted by the Urban County Council of the Issuer at a meeting properly held on \_\_\_\_\_, 2021, signed by the Mayor and now in full force and effect, all as appears from the official records of the Issuer in my possession and under my control.

**IN WITNESS WHEREOF**, I have hereunder set my hand as of \_\_\_\_\_, 2021.

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Clerk, Urban County Council

**EXHIBIT A  
TO INDUCEMENT RESOLUTION**

**Project Description**

The Project is the “Speigle Heights Redevelopment Project” and includes all industrial building facilities to be financed by the Bonds and to be acquired, constructed, installed, and equipped by the Company in the Speigle Heights neighborhood in Fayette County, Kentucky, consisting of land, real property improvements and personal property to be utilized as a 120 to 125-room (more or less) hotel and, as related and subordinate facilities, event space, restaurant space with a rooftop bar, a spa and/or locally inspired microbrewery, and other supporting amenities, in accordance with the Project’s final development plan, to be located on and include the real property known as Suites 120, 150, 170 and 180 at 903 Manchester Street, 904, 910, 922, 926, 930 and 941 Manchester Street, and 962 and 964 Tarr Trace.

**EXHIBIT B  
TO INDUCEMENT RESOLUTION**

**Form of Memorandum of Agreement**

**MEMORANDUM OF AGREEMENT**

This **MEMORANDUM OF AGREEMENT** (this "*Agreement*") is made as of \_\_\_\_\_, 2021, by and between (a) the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, a Kentucky urban-county government established pursuant to the provisions of Chapter 67A of the Kentucky Revised Statutes ("*KRS*" and the "*Issuer*"), and (b) **ASTANA LLC**, a Kentucky limited liability company, its affiliates and assigns (collectively, the "*Company*").

**RECITALS**

**A.** The Issuer is authorized under KRS 103.200 to 103.285, inclusive (the "*Act*"), to issue industrial revenue bonds to finance the costs of acquiring, constructing, installing, and equipping certain industrial projects and facilities within the meaning of the Act, in order to accomplish the public purposes of promoting economic development within the Issuer's environs;

**B.** The Company has advised the Issuer that the Company desires to finance the acquisition, construction, installation, and equipping of an industrial project within the meaning of the Act, being the Speigle Heights Redevelopment Project consisting of the facilities and properties described in **ATTACHMENT A** attached hereto (the "*Project*");

**C.** The Company has asked the Issuer to issue industrial revenue bonds pursuant to the Act in an aggregate principal amount not to exceed \$39,000,000 for the purpose of financing the Project (the "*Bonds*");

**D.** The parties hereto have found and determined that the financing of the Project will tend to accomplish the public purposes of the Act by causing economic development within the Issuer's environs;

**E.** The Issuer proposes to issue the Bonds to finance the Project and desires to authorize the Company to proceed with the financing of the Project and be reimbursed from the proceeds of the Bonds for costs incurred related thereto before the issuance of the Bonds;

**F.** The Issuer proposes to enter into, at the appropriate time and in accordance with the Act, a lease agreement with the Company (the "*Lease Agreement*"), pertaining to the Project, the Lease Agreement to be upon terms and conditions as the Act may require and the Issuer may deem acceptable;

**G.** Due to the Project's location within the development area created by Resolution 100-83, the benefit to that area, and the other unique aspects of the Project, the Issuer is willing to suspend the operation of certain provisions of Ordinance No. 203-80 and the Industrial Revenue/ Housing Bonds Policies and Guidelines of the Lexington-Fayette Urban County Government, ratified in Ordinance No. 52-94, which prohibit the Issuer from taking title to property and leasing it back to companies/developers in order to obtain relief from ad valorem taxes typically paid on the improved property; and

**H.** In order to obtain for the Issuer's residents the benefits listed above, which the Project would create and preserve, the Issuer desires to encourage and induce the Company to proceed with the financing of the Project;

**NOW, THEREFORE,** in consideration of the premises and of the covenants and undertakings herein expressed, the Issuer and the Company hereby agree as follows:

**Section 1.** It is hereby found, determined, and declared that the recitals set forth in the preambles to this Agreement are hereby incorporated in this Section 1 by reference.

**Section 2.** The Company may commence the acquisition, construction, installation, and equipping of the Project and may provide or cause to be provided, at its own expense, any necessary interim financing to permit such acquisition, construction, installation, and equipping to commence and continue.

**Section 3.** Subject to the conditions provided herein, the Issuer will issue and sell the Bonds pursuant to the terms of the Act in an aggregate principal amount not to exceed \$39,000,000. The Bonds shall be signed by the manual or facsimile signature of the Issuer's Mayor and attested to by the Issuer's Clerk or the Urban County Council, and shall bear such title or designation, shall bear interest at such rate or rates, shall be in such denomination or denominations, shall be subject to such terms of redemption, shall be in registered form, shall be payable as to principal, redemption price, and interest at such place or places, and shall contain such other terms and conditions as may be fixed by or pursuant to the Issuer's ordinance authorizing the sale and delivery thereof. The proceeds from the sale of the Bonds shall be used to finance the Project pursuant to the Act.

**Section 4.** The Issuer will cooperate with the Company for the purpose of issuing and selling the Bonds on the best terms reasonably obtainable; and if arrangements therefor satisfactory to the Issuer and the Company can be made, the Issuer will authorize the execution and delivery of such instruments and the taking of such further actions as may be necessary or advisable for the authorization, issuance, and sale of the Bonds on a negotiated basis and the use of the proceeds thereof to finance the Project, all as shall be authorized by law and mutually satisfactory to the Issuer and the Company. The Issuer shall sell the Bonds only to the Company or any affiliated entity or assignee thereof.

**Section 5.** Upon the issuance of the Bonds, the Issuer shall take title to the Company's Project and the Issuer and the Company shall enter into the Lease Agreement pursuant to which



the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of and interest for the Bonds, together with all trustee, paying agent, and serving agent's fees in connection with the Bonds, and any other related charges as the same come due and payable. Issuer shall not be responsible for any costs related to or arising from the lease, including, but not limited to, building costs, repairs, and utilities.

**Section 6.** The Issuer will take or cause to be taken such other acts and adopt or cause to be adopted such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate pursuant thereto. Upon request of the Company, the Issuer shall provide the written statement of assurance required by KRS 103.2101(6) that Issuer is in agreement with the negotiated financial arrangement for the issuance of the Bonds.

**Section 7.** Contemporaneously with the sale of the Bonds, the Company (a) will enter into the Lease Agreement with the Issuer, the terms of which shall obligate the Company to pay the Issuer the amounts described in Section 5 hereof, as and when the same shall become due and payable, all provisions required by law and such other provisions as shall be mutually acceptable to the Issuer and the Company, and (b) will take such further acts and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

**Section 8.** The Company shall pay the fees of the Issuer related to the issuance of the Bonds as specified in Ordinance 21-2021.

**Section 9.** It is understood and agreed by and between the Issuer and the Company that the provisions hereof are not intended to, and shall not be construed or interpreted to, either (a) obligate or authorize the expenditure of any funds of the Issuer derived from any source whatsoever other than the proceeds from the issuance and sale of the Bonds as provided for herein; or (b) create any personal liability of the Issuer's present or future officers, officials, members, and employees, serving from time to time.

**Section 10.** No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant, or agreement therein contained against any past, present, or future officer, member, employee, or agent of the Issuer or the Commonwealth of Kentucky or any agency or political subdivision thereof, as such, either directly or through the Issuer or the Commonwealth of Kentucky or any agency or political subdivision thereof, under any rule of law or equity, statute, or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officer, member, employee, or agent as such shall be expressly waived and released as a condition of and consideration for the execution and delivery of this Agreement and the issuance of the Bonds.

**Section 11.** With notice to and approval from the Issuer, the Company may assign its rights under this Agreement and shall provide notice of such assignment to the Mayor of the Issuer.

**Section 12.** If the parties are unable to agree to the terms of a Lease Agreement acceptable to the Issuer, the Issuer shall not be obligated to issue the Bonds.

**Section 13.** If the Company abandons the Project prior to the issuance of the Bonds, it shall notify the Issuer, whereupon this Agreement shall terminate. Upon any termination of this Agreement under this paragraph, neither the Issuer nor the Company shall have any further rights or obligations hereunder, except that the obligations of the Company under Sections 10 and 15 hereof shall survive any such termination.

**Section 14.** If the Company substantially departs from the Project's plans as provided in its application and final development plan, the Issuer shall not be obligated to issue the Bonds.

**Section 15.** In order to induce the Issuer to execute and deliver this Agreement, the Company agrees to defend, indemnify, and hold the Issuer, its officials, members, employees, or agents harmless against any and all loss, cost, expense, claims, or actions arising out of or connected with or the execution of this Agreement and the consummation of the transactions provided for herein and contemplated hereunder.

**Section 16.** This Agreement may be signed by each party upon a separate copy or separate signature page, and any combination of separate copies signed by all parties or including signature pages so signed will constitute a single counterpart of this Agreement. This Agreement may be signed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement. It will not be necessary, in proving this Agreement in any proceeding, to produce or account for more than one counterpart of this Agreement. This Agreement will become effective when one or more counterparts have been signed by each party, and delivered to the other parties, respectively. Any party may deliver an executed copy of this Agreement (and an executed copy of any documents contemplated by this Agreement) by facsimile transmission to another party or e-mailed .pdf files of scanned copies bearing their respective signatures, and such delivery will have the same force and effect as any other delivery of a manually signed copy of this Agreement (or such other document).

[SIGNATURE PAGE TO MEMORANDUM OF AGREEMENT]

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

By: \_\_\_\_\_  
Linda Gorton  
Mayor

Attest:

By: \_\_\_\_\_  
Clerk, Urban County Council

ASTANA LLC

By: \_\_\_\_\_  
Nik Feldman  
Member

**ATTACHMENT A  
TO MEMORANDUM OF AGREEMENT**

**Project Description**

The Project is the “Speigle Heights Redevelopment Project” and includes all industrial building facilities to be financed by the Bonds and to be acquired, constructed, installed, and equipped by the Company in the Speigle Heights neighborhood in Fayette County, Kentucky, consisting of land, real property improvements and personal property to be utilized as a 120 to 125-room (more or less) hotel and, as related and subordinate facilities, event space, restaurant space with a rooftop bar, a spa and/or locally inspired microbrewery, and other supporting amenities, as provided in the Project’s final development plan, to be located on and include the real property known as Suites 120, 150, 170 and 180 at 903 Manchester Street, 904, 910, 922, 926, 930 and 941 Manchester Street, and 962 and 964 Tarr Trace.

**EXHIBIT C  
TO INDUCEMENT RESOLUTION**

**Form of Payment In Lieu of Taxes Agreement**

**PAYMENT IN LIEU OF TAXES AGREEMENT**

This **PAYMENT IN LIEU OF TAXES AGREEMENT** (this "*Agreement*") is made as of [\_\_\_\_], by and between (a) the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, a Kentucky urban-county government established pursuant to the provisions of Chapter 67A of the Kentucky Revised Statutes ("*KRS*" and the "*County*"), and (b) **[ASTANA LLC**, a Kentucky limited liability company] ( the "*Company*").

**RECITALS**

**A.** The Fayette County School District (the "*School District*"), by and through the Board of Education of Fayette County, Kentucky (the "*Board of Education*"), is a body politic and corporate existing under KRS 160.160 and has the authority under KRS 160.460 through 160.476 to levy ad valorem taxes for school purposes on all property subject to local taxation with a taxable situs in the School District ("*School Property Taxes*");

**B.** The Company or an affiliate thereof is currently acquiring, constructing, installing, and equipping the Speigle Heights Redevelopment Project, an industrial project consisting of the facilities and properties described in **Attachment A** attached hereto (the "*Project*"), the Project being located within the County;

**C.** The Project represents new investment and is expected to generate economic development within the County;

**D.** On [\_\_\_\_], the County adopted an ordinance (the "*Ordinance*") providing for, among other things, the issuance of taxable industrial building revenue bonds over a period of years in an aggregate principal amount of up to \$39,000,000 (the "*Bonds*") for the benefit of the Company, pursuant to KRS 103.200 through 103.285, inclusive, (the "*Act*"), to finance the Company's acquisition, construction, installation, and equipping of the Project, to acquire title to the Project, and to lease said Project back to the Company, all pursuant to the Act;

**E.** The County and the Company have agreed that title to the Project will be conveyed to the County and leased back to the Company, pursuant to the Act, so long as the Bonds are outstanding; and

**F.** As a condition of the County's agreement to enter into the documents necessary to vest title to the Project in the County and to effect the lease

of the Project to the Company, the Company has agreed to make certain payments to the District in lieu of School Property Taxes and to enter into this Agreement with respect thereto;

**NOW, THEREFORE,** in consideration of the foregoing, the mutual agreement of the parties contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Recitals Incorporated.** It is hereby found, determined, and declared that the recitals set forth in the preambles to this Agreement, including the definitions contained therein, are true and correct and are hereby incorporated in this Section 1 by reference.

**Section 2. Project Exempt From Taxation.** It is understood, acknowledged, and agreed by the parties that pursuant to KRS 103.285, the Project is exempt from taxation by the County, the Board of Education, and other political subdivisions in Kentucky to the same extent as other public property used for public purposes, so long as same is owned by the County and any balance remains outstanding on the Bonds. It is further understood, acknowledged, and agreed by the parties that:

(a) upon issuance of the Bonds or any series thereof (i) the Company's leasehold interest is exempt from local taxation and (ii) any proportion of the value of the leasehold interest created through any private financing is taxable at applicable state and local tax rates; and

(b) the recording of the Lease Agreement or Lease Agreements with the County Clerk of Fayette County, Kentucky shall constitute the listing of the taxable leasehold interest in real property created thereby pursuant to KRS 132.220.

The Company agrees annually to list any taxable leasehold interest in tangible personal property created by each Lease Agreement by listing such interest on and filing a Form 62A500 (Tangible Personal Property Tax Return).

**Section 3. Agreement To Make PILOT Payments.** In consideration of the County's agreement to issue the Bonds and take all other actions authorized by the Ordinance, the Company hereby agrees that in each calendar year during the term of this Agreement beginning on and after the first January 1<sup>st</sup> assessment date following issuance of the Bonds (each an "*Assessment Date*") that the County owns the Project or any portion thereof, the Company shall make a payment to the School District computed as indicated below for each of the up to forty (40) Assessment Dates during the term of said Bonds or each series thereof unless this Agreement is earlier terminated (each, a "*PILOT Payment*" and together, the "*PILOT Payments*").

**Section 4. Calculation Of PILOT Payments.** The amount of the PILOT Payment in each calendar year that any balance remains outstanding on the Bonds shall be equal to the Abated School Property Tax, less any School Property Taxes paid by the Company on any portion

of the value of the leasehold interest in the Project owned by the County created through any private financing.

(a) *“Abated School Property Tax”* for any calendar year equals the product of (i) the Fair Cash Value (as hereinafter defined) of the Project or portion thereof financed by the Bonds and owned by the County as of the January 1<sup>st</sup> of such calendar year which would be subject to School Property Taxes if the Project were owned by a tax-paying entity absent application of KRS 103.285 (the *“Locally Taxable Assets”*), multiplied by (ii) (A) the ad valorem tax rate levied by the Board of Education for such calendar year under KRS 160.460 through 160.476, less (B) the minimum local tax effort of thirty cents (\$0.30) per \$100 of assessed property valuation (the *“PILOT Tax Rate”*).

(b) If, in any calendar year during which the foregoing calculation is made, the Board of Education has levied different ad valorem tax rates on different classes of property subject to School Property Taxes, the foregoing calculation shall be made separately for each such class of property that is included within the portion of the Project financed by the Bonds.

**Section 5. Determination Of Fair Cash Value Of The Project.** The *“Fair Cash Value”* of the real property portion of the Project shall be as determined annually by the Fayette County Property Valuation Administrator. The *“Fair Cash Value”* of the personal property portion of the Project shall be determined using its original cost, age and the applicable trending tables published by the Department of Revenue, Kentucky Finance and Administration Cabinet, in its annual Form 62A500 (Tangible Personal Property Tax Return), adjusted to take into account the scrapping, removal, or other disposition of personal property in the ordinary course of business.

**Section 6. Timing Of PILOT Payments.** Any PILOT Payment payable in any calendar year hereunder shall be paid at the same time and in the same manner as School Property Taxes for such calendar year, except that the Company shall deliver the PILOT Payment directly to the School District at the address provided in Section 8 below, instead of the regular tax collector, along with supporting calculations. Each PILOT Payment shall be due and payable in full no later than two months from the date the bill for the School Property Taxes is issued in accordance with KRS 134.015; provided, however, if the Company pays a PILOT Payment to the School District on or before any discount date established pursuant to KRS 134.015, the Company may reduce the PILOT Payment by the corresponding discount percentage, and provided further that the Company pays a PILOT Payment to the School District after the due date established pursuant to KRS 134.015, the Company shall increase the PILOT Payment by the corresponding penalty percentage.

**Section 7. Termination.** Notwithstanding any other provision herein and with the exception of Sections 1 and 2 hereof, this Agreement shall terminate on the day immediately following the earlier to occur of either (a) the first date that title to the Project is no longer held by the County or (b) the first date that no Bonds issued by the County pursuant to the Ordinance remain issued and outstanding.

**Section 8. Notices and Payments.**

(a) All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed, postage prepaid, addressed as follows:

To the County: Finance Commissioner  
Lexington-Fayette Urban County Government  
200 E. Main Street  
Lexington, Kentucky 40507

To the Company: New Circle Investments LLC  
3576 Briar Hill Road  
Lexington, KY 40516-9708

With a copy to: Timothy J. Eifler  
Stoll Keenon Ogden PLLC  
500 West Jefferson Street  
Suite 2000  
Louisville, Kentucky 40202

The Count and the Company may by notice given hereunder designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(b) All School PILOT Payments shall be considered paid when delivered or mailed by regular U.S. mail, postage prepaid, addressed as follows:

To the School District, at: Superintendent  
Fayette County Public Schools  
450 Park Place  
Lexington, Kentucky 40511

The School District may by notice given hereunder designate a different address to which subsequent PILOT Payments shall be sent.

**Section 9. Entire Agreement.** This Agreement contains all of the agreements and conditions made between the parties hereto regarding the subject matter of this Agreement and there are no other agreements or understandings, written or oral, between the parties relating to the subject matter of this Agreement. This Agreement supersedes all prior agreements and understandings, written and oral, between the parties with respect to such subject matter. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by both parties hereto or their respect successors in interest. The invalidity, illegality, or unenforceability of any provision of this Agreement will not affect the validity, legality, or enforceability of the remaining provisions.



**Section 10. Binding Effect; No Third-Party Beneficiaries.** This Agreement shall inure to the benefit of and shall be binding upon the County, the Company, and their respective successors and assigns. The County and the Company agree that this Agreement is not intended to create any third-party beneficiaries, and that no provision of this Agreement is intended to benefit any person or entity other than the signatories hereto. The provisions of this Agreement may be enforced solely by the County, the Company, and their respective successors and assigns and shall not be enforceable by the School District, Board of Education or any other person or entity.

**Section 11. Execution In Counterparts.** This Agreement may be signed by each party upon a separate copy or separate signature page, and any combination of separate copies signed by all parties or including signature pages so signed will constitute a single counterpart of this Agreement. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. It will not be necessary, in proving this Agreement in any proceeding, to produce or account for more than one counterpart of this Agreement. This Agreement will become effective when one or more counterparts have been signed by each party, and delivered to the other parties, respectively. Any party may deliver an executed copy of this Agreement (and an executed copy of any documents contemplated by this Agreement) by facsimile transmission to another party or e-mailed .pdf files of scanned copies bearing their respective signatures, and such delivery will have the same force and effect as any other delivery of a manually signed copy of this Agreement (or such other document).

**Section 12. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

**Section 13. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

*[Signature page immediately follows]*

[SIGNATURE PAGE TO PILOT AGREEMENT]

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

By: \_\_\_\_\_  
Linda Gorton  
Mayor

Attest:

By: \_\_\_\_\_  
Clerk, Urban County Council

[ASTANA LLC]

By: \_\_\_\_\_  
[Name]  
[Title]

**ATTACHMENT A**

**Project Description**

[Project Description to be inserted]