

LIBRARY PAYMENT IN LIEU OF TAXES AGREEMENT

This **LIBRARY PAYMENT IN LIEU OF TAXES AGREEMENT** (this "*Agreement*") is made as of June 24, 2021, by and among:

- (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) (i) **ASTANA LLC**, a Kentucky limited liability company ("*Astana*");
(ii) **NEW CIRCLE INVESTMENTS LLC**, a Kentucky limited liability company ("*New Circle*"); and
(iii) **NEW OCTAGON LIMITED LIABILITY COMPANY**, a Kentucky limited liability company ("*New Octagon*" and together with Astana and New Circle, each a "*Company*" and collectively, the "*Companies*").

RECITALS

A. The Lexington Library Board of Trustees (the "*Library Board*") is a unit of the County established pursuant to KRS 173.310(1) and funded by an annual general appropriation of the County equivalent to the revenue generated by a countywide ad valorem tax rate of \$0.05 per \$100 worth of property assessed for local taxation pursuant to KRS 173.360(1) ("*Library Appropriations*");

B. The Companies are 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 June 24, 2021, 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 Astana, its affiliates and assigns, pursuant to KRS 103.200 through 103.285, inclusive, (the "*Act*"), to finance the Companies' acquisition, construction, installation, and equipping of the Project, to acquire title to the Project, and to lease said Project back to the Companies, all pursuant to the Act;

E. The County and the Companies have agreed that title to the Project will be conveyed to the County and leased back to the Companies, 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 Companies, the Companies have agreed to make certain payments to the Library Board in lieu of Library Appropriations 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 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) each 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 associated taxable leasehold interest in real property created thereby pursuant to KRS 132.220.

Each Company agrees annually to list any taxable leasehold interest in tangible personal property created by their respective 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, each Company hereby agrees that in each calendar year during the term of this Agreement beginning on and after the first January 1st 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 Library Board computed in Section 4 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 Library PILOT Payments. The total PILOT Payment for the first five Assessment Dates that any balance on the Bonds is outstanding shall be One Thousand Five Hundred Dollars (\$1,500), one-third (1/3) of which shall be paid by each Company. For the remaining Assessment Dates that any balance remains outstanding on the

Bonds, the PILOT Payment shall be equal to 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 1st of such calendar year which would be subject to County ad valorem property taxes if the Project were owned by a tax-paying entity absent application of KRS 103.285, multiplied by (ii) the Library PILOT Rate. "*Library PILOT Rate*" shall be the following rates for the following years during the term of the Bonds:

Year of Bond Term	Library PILOT Rate
Year 6-10	\$0.05 per \$100 of 50 percent of Fair Cash Value
Year 11-20	\$0.05 per \$100 of Fair Cash Value
Year 21-40	\$0.06 per \$100 of Fair Cash Value

The obligation of each Company to pay its respective share of the PILOT Payment shall be direct and primary, and the obligation of the Companies to pay all PILOT Payments shall be joint and several in all respects.

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 or replacement 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 County ad valorem property taxes for such calendar year, except that each Company shall deliver their PILOT Payment directly to the Library Board 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 County ad valorem property taxes is issued in accordance with KRS 134.015; provided, however, if a Company pays a PILOT Payment to the Library Board on or before any discount date established pursuant to KRS 134.015, that Company may reduce the PILOT Payment by the corresponding discount percentage, and provided further that if a Company pays a PILOT Payment to the Library Board after the due date established pursuant to KRS 134.015, that 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 earliest to occur of (a) the first date that title to the Project is no longer held by the County; (b) the first date that no Bonds issued by the County pursuant to the Ordinance remain issued and outstanding; or (c) forty years from the date of issuance of the Bonds.

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: [Company Name or Names]
3576 Briar Hill Road
Lexington, Kentucky 40516-9708]

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

The County and each 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 PILOT Payments shall be considered paid when delivered or mailed by regular U.S. mail, postage prepaid, addressed as follows:

To the Library Board, at: Board of Trustees
Lexington Public Library
Central Library
140 E. Main Street
Lexington, Kentucky 40507

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

Section 9. Entire Agreement. This Agreement and the Memorandum of Agreement between the County and Astana dated June 24, 2021 governing the issuance of the Bonds contain 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 and the Memorandum of Agreement supersede 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 respective 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. This Agreement shall inure to the benefit of and shall be binding upon the County, the Companies, and their respective successors and assigns. The County and the Companies hereby designate Lexington Public Library and the Lexington Library Board of Trustees as third-party beneficiaries of this Agreement, which shall have the right to enforce the provisions of this Agreement against the Companies and their successors and assigns.

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 LIBRARY PILOT AGREEMENT]

IN WITNESS WHEREOF, the County and the Companies have caused this Library Payment In Lieu of Taxes Agreement to be executed in their respective names as of the date first written above.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

By: 
Linda Gorton
Mayor

Attest:

By: 
Clerk, Urban County Council

ASTANA LLC

By: New Circle Development LLC,
a Kentucky limited liability company, Manager

By: *Nik Feldman*
Nicholas Feldman, Manager

NEW CIRCLE INVESTMENTS LLC,
a Kentucky limited liability company

By: *Nik Feldman*
Nicholas Feldman, Manager

NEW OCTAGON LIMITED LIABILITY
COMPANY

By: New Circle Investments LLC,
a Kentucky limited liability company, Manager

By: *Nik Feldman*
Nicholas Feldman, Manager

[SIGNATURE PAGE TO LIBRARY PILOT AGREEMENT]

As Seen and Agreed

Pursuant to KRS 103.2101(6):

LEXINGTON LIBRARY BOARD OF TRUSTEES

By LT Smith

Lawrence T. Smith
Chair

ATTACHMENT A

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, two restaurants, rooftop bar, a salon and spa, and other supporting amenities, in accordance with the Project's final development plan, to be located on and include the real property known as (1) Suites 120, 150, 170 and 180 at 903 Manchester Street, and (2) 904, 910, 920, 926, 930 and 941 Manchester Street, and (3) 962 and 964 Tar Trace.

Each Company's portion of the Project is as follows:

Astana Project: (i) Land, real property improvements and personal property to be located on and include the real property known as 941 Manchester Street and Suite 120 at 903 Manchester Street, to be utilized for a 120 to 125-room (more or less) hotel, restaurant, rooftop bar, and related event space, and (ii) Certain leasehold improvements to be located at Suites 150, 170 and 180 at 903 Manchester Street to be utilized, as related and subordinate facilities, for a restaurant, salon and a spa;

New Circle Project: Land, real property improvements and personal property to be located on and include the real property known as (i) Suites 150, 170 and 180 at 903 Manchester Street to be leased or subleased to Astana to be utilized for a restaurant, salon and spa; and (ii) 904, 910 and 920 Manchester Street and 962 and 964 Tarr Trace to be utilized for parking; and

New Octagon Project: Land, real property improvements and personal property to be located on and include the real property known as 922, 926 and 930 Manchester Street to be utilized for parking.

[SIGNATURE PAGE TO LIBRARY PILOT AGREEMENT]

IN WITNESS WHEREOF, the County and the Companies have caused this Library Payment In Lieu of Taxes Agreement to be executed in their respective names as of the date first written above.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

By: *Linda Gorton*
Linda Gorton
Mayor

Attest:

By: *[Signature]*
Clerk, Urban County Council

ASTANA LLC

By: New Circle Development LLC,
a Kentucky limited liability company, Manager

By: *Nik Feldman*
Nicholas Feldman, Manager

NEW CIRCLE INVESTMENTS LLC,
a Kentucky limited liability company

By: *Nik Feldman*
Nicholas Feldman, Manager

NEW OCTAGON LIMITED LIABILITY
COMPANY

By: New Circle Investments LLC,
a Kentucky limited liability company, Manager

By: *Nik Feldman*
Nicholas Feldman, Manager