

SCHOOL PAYMENT IN LIEU OF TAXES AGREEMENT

This SCHOOL 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 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 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 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 School 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) 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 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 Company’s series of Bonds and owned by the County as of the January 1st 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, 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 each Company shall deliver their 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 a Company pays a PILOT Payment to the School District on or before any discount date established pursuant to KRS 134.015, that Company may reduce its PILOT Payment by the corresponding discount percentage, and provided further that if a Company pays a PILOT Payment to the School District 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 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 Companies: [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 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 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 Fayette County Public Schools and the Fayette County School Board 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 SCHOOL PILOT AGREEMENT]

IN WITNESS WHEREOF, the County and the Companies have caused this School 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, a Kentucky limited liability
company**

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

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, a Kentucky limited liability
company**

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

By: *Nik Feldman*
Nicholas Feldman
Manager

[SIGNATURE PAGE TO SCHOOL PILOT AGREEMENT]

IN WITNESS WHEREOF, the County and the Companies have caused this School 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, a Kentucky limited liability
company

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

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, a Kentucky limited liability
company

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

By: Nik Feldman
Nicholas Feldman
Manager

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 SCHOOL PILOT AGREEMENT]

As Seen and Agreed

Pursuant to KRS 103.2101(6):

FAYETTE COUNTY PUBLIC SCHOOLS

By: 

Demetrus Liggins
Superintendent

Handwritten notes:
HMS
7-5-2022
DL