

PAYMENT IN LIEU OF TAXES (“PILOT”) AGREEMENT

Project: New Carrollton Metro Station

This Payment in Lieu of Taxes Agreement (this “**Agreement**”), is made this _____ day of _____, 2017, by and between NEW CARROLLTON DEVELOPER, LLC, acting for itself and its affiliates (collectively the “**Developer**”), and PRINCE GEORGE’S COUNTY, MARYLAND, a body corporate and politic (the “**County**”).

WHEREAS, Section 7-516 of the Tax-Property Article of the Annotated Code of Maryland, as amended (the “**Act**”) provides that the County may exempt or partially exempt an “**Economic Development Project**” within the meaning of the Act from County real property taxes under certain conditions; and

WHEREAS, the Developer proposes to develop a mixed-use project (the “**Project**”) consisting of an approximately 1 million square feet in office space, 1,375 multi-family units, 120,000 square feet of retail/restaurant space, and a 250-room hotel, which is projected to add approximately 5,500 full-time, permanent jobs upon its completion, including approximately 2,035 jobs expected to be held by County residents; and

WHEREAS, in connection with first phase of development of the Project (“**Phase 1**”), the Developer is proposing to develop over multiple subphases approximately 460,000 square feet of land located in Prince George’s County, Maryland at and adjacent to the New Carrollton Metro Station (the “**Phase 1 Property**”);

WHEREAS, the Developer proposes that Phase 1 will occur over two subphases, where the first subphase is expected to consist of the construction of approximately 200,000 square feet of office space, approximately 2,000 square feet of retail space and an approximately 250,000 square feet structured parking garage (“**Phase 1a**”); and the second subphase is expected to consist of the construction of approximately 250 housing units and approximately 10,000 square feet of retail space (“**Phase 1b**”); and

WHEREAS, Phase 1a will occur on a portion of the Phase 1 Property as more particularly identified on Exhibit A attached hereto (the “**Phase 1a Property**”), as may be amended from time to time in accordance with Paragraph 13 of this Agreement; and

WHEREAS, the Phase 1a Property is currently owned by the Washington Metropolitan Area Transit Authority (“**WMATA**”) and will be leased to and controlled by the Developer (or one of its affiliates or subsidiaries) pursuant to a 98-year lease; and

WHEREAS, the Developer hereby represents that the Project will qualify under the provisions of said Act for an agreement for payments in lieu of County real property taxes upon the Phase 1a Property; and

WHEREAS, pursuant to Council Resolution No. CR- __-2017 adopted on _____, 2017, the County Council approved the exemption of Phase 1a from County real property taxes, and an agreement for payments in lieu of taxes for the Project, and authorized the County Executive to enter into such an agreement; and

WHEREAS, the County is entering into this Agreement for the payment of negotiated amounts in lieu of County real property taxes with respect to the Phase 1a Property and intends to enter into a subsequent PILOT agreement with respect to the remainder of the Phase 1 Property, provided that the Developer complies with the terms of this Agreement.

NOW THEREFORE, THIS AGREEMENT WITNESSETH:

In consideration of the mutual covenants, terms and agreements hereof and pursuant to the power and authority of the Act, it is hereby agreed as follows:

1. (a) The payments to be made by the Developer to the County, provided for herein with respect to the Phase 1a Property, shall be in lieu of all County real property taxes (except for the dedicated supplemental education property taxes) on the Phase 1a Property under the Tax-Property Article of the Annotated Code of Maryland, as amended. Such payments shall be made by the Developer and shall be accepted by the County only as long as the Developer shall comply with all of its obligations under this Agreement and the requirements of the Act.

(b) This Agreement shall not waive or defer the payment of other County taxes, assessments and fees, including but not limited to County real property and personal property supplemental education taxes, sanitation taxes, County solid waste service charges, or other taxes assessed by entities or jurisdictions other than the County, including but not limited to State of Maryland taxes, municipal taxes, the Washington Suburban Sanitary Commission, Washington Suburban Transit Commission and the Maryland-National Capital Park and Planning Commission by Developer.

2. The Phase 1a Property shall be exempt from County real property taxes commencing on the date a certificate of occupancy for the tenancy of the first building is issued and continuing each County tax year for fifteen (15) years thereafter (the “**Phase 1a Term**”).

3. The Parties agree that pursuant to the Act, the Payment in Lieu of Taxes (the “**Phase 1a PILOT Amount**”) during the Phase 1a Term due from the Developer shall, subject to Paragraph 9 hereof, be equal to the sum of (a) the real property taxes assessed on the Phase 1a Property as of July 1, 2016 (*i.e.*, the July 1st date prior to the commencement of construction of Phase 1a) (the “**Phase 1a Pre-Use & Occupancy Taxes**”), which the parties hereto agree is equal to \$0.00, plus (b) for each County tax year of the Phase 1a Term, twenty-five percent (25%) of the difference between (i) the Phase 1a Taxes (as defined in Paragraph 4 hereof) on the Phase 1a Property for such County tax year over (ii) the Phase 1a Pre-Use and Occupancy Taxes.

4. During the Phase 1a Term, the Developer will be obligated to pay an amount equal to 100% of the County real property taxes that would otherwise be due on or before September 30th of each year based on the assessed value of the Phase 1a Property (the “**Phase 1a Taxes**”).

5. During the Phase 1a Term, the County shall refund an amount equal to the Phase 1a Taxes paid by the Developer less the Phase 1a PILOT Amount (the “**Phase 1a Refund**”) to the Developer. Unless the County has cause to withhold the Phase 1a Refund, any Phase 1a Refund shall be paid by the County to the Developer no later than sixty (60) days after receipt of 100% of the real property taxes. If the County is in default with respect to any payment required under this Agreement, the Developer may declare a default by providing written notice of such default to the

County. If within thirty (30) days of such notice the full amount of any Phase 1a Refund is not paid, then the Developer may (i) seek all available remedies in law and equity including, but not limited to, specific performance, and (ii) if so litigated, be entitled to all reasonable attorneys' fees, litigation costs and expenses if so awarded by the Court after a determination that the County had no reasonable basis to withhold any portion or all of the Phase 1a Refund.

6. Each year after the expiration of the Phase 1a Term, the Developer shall pay all County real property taxes on the Phase 1a Property when due and the County's obligations hereunder with respect to the Phase 1a Refund shall terminate.

7. All payments due under this Agreement shall be subject to the same interest rate, collection, and tax sale provisions of the Prince George's County Code as for the collection of County real property taxes, except as otherwise expressly set forth in this Agreement.

8. If the Developer is in default for sixty (60) days with respect to any payments or obligations required under this Agreement, the County may declare a default by providing written notice of such default to the Developer. If within thirty (30) days of such notice, the payments have not been brought current, then the County may declare all taxes due as follows: with respect to the Phase 1a Property, a sum equal to the total current real property taxes which would have been due from the Developer based on the current assessed value of the Phase 1a Property, plus all interest, if any, which may be assessed pursuant to Paragraph 7 of this Agreement, less all amounts actually paid by the Developer for that current tax year. If there is a default on the part of the Developer, the County may take any or all of the following actions: (i) terminate this Agreement if the Developer has failed to make a payment pursuant to Paragraph 4 of this Agreement; (ii) renegotiate this Agreement (iii) or seek any other remedy available at law or in equity. Any Phase 1a payments past due under this Agreement shall be considered a lien against the Phase 1a Property.

9. The payments in lieu of taxes for the Phase 1a Property shall at no time exceed the amount of County taxes otherwise payable on the Phase 1a Property based on the current assessment for County real property taxes.

10. During either the Phase 1a Term, the Developer shall not take any action with respect to the Project which would change its use as an Economic Development Project within the meaning of the Act, except as expressly permitted in writing by the County. For this purpose, any action by a tenant to terminate the applicable lease or to move out of the Property, or Developer's termination of a tenant's lease as a result of a tenant's default, or as a result of any casualty or condemnation, shall not be considered to change the use of the Project as an Economic Development Project.

11. The Developer has submitted a County-Based and Minority Business Enterprise Plan (the "**Plan**") made a part hereof and incorporated herein by reference as Exhibit B, which includes a goal of thirty-five percent (35%) for County-based businesses ("**CBBs**"), minority business enterprises ("**MBEs**") and County-based minority business enterprise ("**CMBEs**"), with a minimum CBB, MBE and CMBE participation of twenty-five percent (25%) of the total building costs and site work costs, as depicted in the project pro forma for Phase 1 (with certain exclusions agreed to by the MBE Compliance Officer). The Parties agree that no less than twenty percent (20%) of the total building costs, site work costs, and related construction services (with certain

exclusions agreed to by the MBE Compliance Officer) must be allocated to CMBEs. The Plan has also been approved by the County's Minority Business Compliance Officer. Failure of the Developer to materially comply with the provisions of the Plan may result in fines and/or liquidated damages to the extent provided for in the Plan.

12. During the Phase 1a Term, this Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns and shall bind and run with the Phase 1a Property.

13. Exhibit A may be amended from time to time to take into account the future subdivision of the Phase 1a Property. If, as a result of the subdivision of the Phase 1a Property, there are new parcels (within the boundaries of the Phase 1a Property), such parcels shall be identified in a new Exhibit A provided by the Owner to the County and attached to this Agreement. In such event, the Phase 1a Pre-Use and Occupancy Tax Amount shall be recalculated using the 2016 assessed value of the added parcels.

14. On or before December 1st of each year, commencing in the year 2018, the Developer agrees to supply such information as may be reasonably required by the County in order to comply with its reporting requirements under the Act.

15. The Developer agrees to provide the County with the right to access and inspect the employment information collected by the Developer during the term of this Agreement within thirty (30) days of notice by the County. A failure to do so by the Developer will be deemed a default under Paragraph 8 of this Agreement. In an effort to further the purposes of the Act, Developer shall collect employment information from the employers located in the Project.

16. All notices or other communication required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, or by hand delivery to:

County: Office of the County Executive
14741 Governor Oden Bowie Drive, 5th Floor
Upper Marlboro, Maryland 20772
Attention: Thomas Himler, Deputy Chief Administrative Officer for
Budget, Finance, Economic Development and Administration

With a copy to: Prince George's County Office of Law
14741 Governor Oden Bowie Drive, 5th Floor
Upper Marlboro, Maryland 20772
Attention: County Attorney

Developer: Urban Atlantic, LLC
7735 Old Georgetown Rd, Suite 600

Bethesda, Maryland 20814
Attention: Lois Fried, Managing Partner

With a copy to: McGuireWoods LLP
7 Saint Paul Street, Suite 1000
Baltimore, MD 21202-1671
Attention: Alan Cason

or at such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Paragraph.

17. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, and any action for enforcement shall be brought in the Circuit Court for Prince George's County.

18. If any clause, covenant, paragraph or provision herein shall be declared fully or partially invalid or unenforceable, the remaining clauses, covenants, paragraphs and provisions shall remain enforceable and valid to the fullest extent permitted by law.

19. This Agreement constitutes the full and complete agreement between the parties, and no amendments thereto shall be valid, except in writing and duly approved and executed by the parties.

20. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Signatures to this Agreement may be delivered by facsimile, pdf or other electronic means, and each such signature shall be considered an original for all purposes of this Agreement.

21. All understandings and agreements, oral or written, previously made between the parties are merged into this Agreement and this Agreement fully and completely expresses the agreement between the parties with respect to the PILOT. This Agreement cannot be amended, modified or terminated except by a written instrument executed by both parties hereto.

22. The Developer may assign its rights and obligations under this Agreement to Urban Atlantic Development, LLC ("UAD") and any of UAD's or Developer's subsidiaries, affiliates and related entities with the written consent of the County, which consent shall not be unreasonably withheld.

23. The recitals set forth above are herein incorporated as operative provisions.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and date first above written.

WITNESS:

NEW CARROLLTON DEVELOPER, LLC

By:

Lois Fried, Managing Partner

WITNESS:

PRINCE GEORGE'S COUNTY, MARYLAND

By:

Thomas Himler, Deputy Chief
Administrative Officer for Budget, Finance,
Economic Development and Administration

REVIEWED FOR LEGAL SUFFICIENCY:

OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A

PHASE 1A PROPERTY DESCRIPTION

Address:	Ellin Road
Legal Description:	Tax Map 0052 in Grid 00A2 Parcel 0220
Tax ID:	20-2227957
Property Land Area:	2.09 acres
Primary Structure Built:	Not Applicable
Assessed Value – Base:	\$0

EXHIBIT B

COUNTY-BASED AND MINORITY BUSINESS ENTERPRISE PLAN