

PAYMENT IN LIEU OF TAXES (“PILOT”) AGREEMENT

Project: New Carrollton Metro Station – Phase 2

This Payment in Lieu of Taxes Agreement (this “**Agreement**”), is made this ____ day of _____, 2021, by and between NEW CARROLLTON MULTI-FAMILY II, 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 and its affiliates are developing a mixed-use, transit-oriented development consisting of approximately 2,700,000 square feet, located near New Carrollton Metro Station in Prince George’s County, Maryland (the “**Project**”); and

WHEREAS, in connection with the first phase of the Project (“**Phase 1**”), the County Council adopted CR-036-2017 on June 13, 2017, which authorized the execution of two payment in lieu of taxes agreements;

WHEREAS, a Payment in Lieu of Taxes Agreement dated August 29, 2017, related to Phase 1a of the Project, and a Payment in Lieu of Taxes Agreement dated November 27, 2018, related to Phase 1b of the Project, were executed by the County and an affiliate of the Developer related to approximately 515,000 square feet of land;

WHEREAS, the Developer and its affiliates are completing the construction of Phase 1 of the Project, which consists of two sub-phases and the construction of (i) an approximately 200,000 square feet office and 2,000 square feet retail building, which was completed in 2018 and (ii) an approximately 275,000 square feet multi-family and 3,500 square feet retail building containing approximately 282 units, which the Developer expects to deliver in 2021; and

WHEREAS, the Developer proposes to develop Phase 2 of the Project as a mixed-use, transit-oriented development, including retail, commercial, residential and office facilities; and

WHEREAS, as a part of the second phase of the Project (“**Phase 2**”), the Developer and its affiliates propose to develop an approximately 282,000 square feet multi-family residential building containing approximately 286 dwelling units and approximately 3,900 square feet of work/live units, commercial office space, retail space, or a combination thereof, which is projected to add approximately 4,174 full-time, permanent jobs upon its completion, a significant portion of which jobs are expected to be held by County residents; and

WHEREAS, Phase 2 will occur on the property located in Prince George’s County, Maryland at and adjacent to the New Carrollton Metro Station, as more particularly identified on Exhibit A attached hereto (the “**Phase 2 Property**”), as may be amended from time to time in accordance with Paragraph 13 of this Agreement; and

WHEREAS, the Developer hereby represents that Phase 2 will qualify under the provisions of the Act for an agreement for payments in lieu of County real property taxes upon the Phase 2 Property; and

WHEREAS, pursuant to Council Resolution No. CR-__-2021 adopted on _____, 2021, the County Council approved the exemption of the Phase 2 Property from County real property taxes, and an agreement for payments in lieu of taxes for Phase 2, 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 2 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 2 Property, shall be in lieu of all County real property taxes (except for the dedicated supplemental education property taxes) on the Phase 2 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 2 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 2 Term**”)

3. The Parties agree that pursuant to the Act, the Payment in Lieu of Taxes (the “**Phase 2 PILOT Amount**”) during the Phase 2 Term due from the Developer shall, subject to Paragraph 9 hereof, be equal to an amount not less than the sum of (a) [the real property taxes assessed on the Phase 2 Property as of the July 1st 20 _____] (the “**Phase 2 Pre-Use & Occupancy Taxes**”), plus (b) [for each County tax year of the Phase 2 Term, twenty-five percent (25%) of the Phase 2 County real property taxes related to the Project that would have otherwise been due absent the Agreement. Commencement of construction shall be deemed the date of issuance of the building permit for the Project. An example of the calculation of the Phase 2 PILOT Amount is shown on Exhibit C.]

4. During the Phase 2 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 2 Property (the “**Phase 2 Taxes**”).

5. During the Phase 2 Term, the County shall refund an amount equal to the Phase 2 Taxes paid by the Developer less the Phase 2 PILOT Amount (the “**Phase 2 Refund**”) to the Developer. Unless the County has cause to withhold the Phase 2 Refund, any Phase 2 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 or sixty (60) days after September 30, whichever is later. 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 2 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 2 Refund.

6. Each year after the expiration of the Phase 2 Term, the Developer shall pay all County real property taxes on the Phase 2 Property when due and the County’s obligations hereunder with respect to the Phase 2 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 noncompliant 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 2 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 2 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 2 payments past due under this Agreement shall be considered a lien against the Phase 2 Property.

9. The payments in lieu of taxes for the Phase 2 Property shall at no time exceed the amount of County taxes otherwise payable on the Phase 2 Property based on the current assessment for County real property taxes.

10. During the Phase 2 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 hard and soft costs for the multifamily building, improvements to Garden City Drive and the public plazas, as described in the MBE Plan (the "**Phase 2 Project**") with certain exclusions agreed to by the MBE Compliance Officer. The Parties agree that no less than [twenty percent (20%)] of the Phase 2 Project (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 2 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 2 Property.

13. Exhibit A may be amended from time to time to take into account the future subdivision of the Phase 2 Property. If, as a result of the subdivision of the Phase 2 Property, there are new parcels (within the boundaries of the Phase 2 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 2 Pre-Use and Occupancy Tax Amount shall be recalculated using the 20__ assessed value of the added parcels.

14. On or before December 1st of each year, commencing in the year 20__, 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
1301 McCormick Drive, Suite 4000
Largo, Maryland 20774
Attention: Angie Rodgers, Deputy Chief Administrative Officer –
Economic Development

With a copy to: Prince George's County Office of Law
1301 McCormick Drive, Suite 4100
Largo, Maryland 20774
Attention: County Attorney

Developer: Urban Atlantic Development, LLC
7735 Old Georgetown Rd, Suite 600
Bethesda, Maryland 20814
Attention: Lois Fried, Managing Partner

With a copy to: McGuireWoods LLP
500 East Pratt Street, Suite 1000
Baltimore, Maryland 21202
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 dully 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 MULTI-FAMILY II, LLC

By: _____

Name: _____

Title: _____

WITNESS:

PRINCE GEORGE'S COUNTY, MARYLAND

By: _____

Name: _____

Title: _____

REVIEWED FOR LEGAL SUFFICIENCY:

OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A

PHASE 2 PROPERTY DESCRIPTION

Address: Garden City Drive, Landover Maryland 20785

Legal Description: A portion of Parcel B FT EX 1595 SF to PG CO as shown on the boundary map

Tax ID: 20-2275626

Property Land Area: _____ acres

Primary Structure Built: Not Applicable

Assessed Value – Base: \$0

EXHIBIT B

COUNTY-BASED AND MINORITY BUSINESS ENTERPRISE PLAN

(Attached)

EXHIBIT C

SAMPLE CALCULATION OF PHASE 2 PILOT AMOUNT

The following equation demonstrates the calculation of the Phase 2 PILOT Amount:

$$\begin{array}{rclcl} \text{Phase 2 Pre-Use \& Occupancy Taxes} & & \text{25\% of (Phase 2 Taxes)} & = & \text{Phase 2 PILOT Amount} \\ & \text{plus} & & & \end{array}$$

The following, which is for illustrative purposes only, provides an example of how the Phase 2 PILOT Amount will be calculated with the following assumptions:

1. The Phase 2 Pre-Use & Occupancy Taxes are \$0.00¹ under CR-[__]-2021.
2. The Phase 2 Taxes are \$100.00² in tax year 20XX.

$$\begin{array}{rclcl} \text{Phase 2 Pre-Use \& Occupancy Taxes} & + & \text{25\% of (Phase 2 Taxes)} & = & \text{Phase 2 PILOT Amount} \\ \$0.00 & + & 0.25 \times (\$100.00) & = & \$25.00^3 \end{array}$$

¹ Actual.

² Example of Phase 2 Taxes amount.

³ The Developer will pay \$100.00 to the County, and the County will rebate the Phase 2 Refund of \$75.00 to the Developer.