

AGREEMENT IN LIEU OF TAXES

This Agreement In Lieu of Taxes (this "Agreement") is made effective as of the ____ day of April, 2018, by and among the City of Dayton, Kentucky (the "City"), the Dayton Independent School District (the "School District"), and Arlington Properties, Inc., an Alabama Corporation (the "Developer"):

WITNESSETH

WHEREAS, the Developer plans to acquire land in the City, within the Manhattan Harbour Development in the City, more fully described as Parcel F, Manhattan Harbour, Section 5, attached as Exhibit A hereto (with the plat set forth at Exhibit A to be recorded in the records of the Campbell County Clerk at Newport, Kentucky), and plans to construct thereon a multi-family residential rental development, together with related site amenities (the "Project"); and

WHEREAS, the City intends to issue Industrial Building Revenue Bonds (the "Bonds") to finance the acquisition and construction of the Project and in conjunction therewith proposes to enter into this Agreement; and

WHEREAS, the Project is within the Manhattan Harbour Development Area (the "Development Area), which was established by the City pursuant to the provisions of KRS 65.7041 to KRS 65.7083, and the City has established a special fund for the receipt and disbursements of incremental taxes pledged to the Development Area (the "Special Fund"); and

WHEREAS, the City and the School District are interested in promoting economic development and employment opportunities within their respective bounda-

ries and are willing to assist the Developer in its efforts provided adequate payments in lieu of taxes are provided for; and

WHEREAS, the Developer and the City have entered into an Inducement Contract, for the City to authorize, issue, and sell the Bonds in the aggregate amount not to exceed \$35,000,000 pursuant to KRS 103.200 through 103.285, to finance the acquisition and construction of the Project; and

WHEREAS, the economic incentive to the Developer by virtue of the issuance of the Bonds is the abatement of real estate *ad valorem* taxes with respect to the Project; and

WHEREAS, the City and the School District have agreed to the abatement of certain real property *ad valorem* taxes, while at the same time protecting the payment of tax increments that have been pledged to the Development Area, and the Developer has agreed to make payments in lieu of taxes to the City, the School District, and the County of Campbell, Kentucky (the "County") and to implement that agreement, the Parties now wish to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree as follows:

1. The City, the School District, and the Developer hereafter confirm and affirm the accuracy of the Recitals contained above and those contained herein. The Campbell County Property Valuation Administrator (the "PVA") is responsible for establishing assessed values of real estate within Campbell County for the purpose of imposing real estate *ad valorem* taxes.

(a) Upon the issuance of the Bonds, the Project will be exempt from real property *ad valorem* taxes pursuant to the provisions of KRS 103.285.

(b) During the term of the Bonds, and any time when the Project is exempt from local real property *ad valorem* taxes, the Developer will pay to the School District, the County, and the City, annual payments in lieu of taxes in accordance with the following schedule:

1.2.1. To the School District an annual amount equal to 65% percent of the amount the School District would have received for the respective tax year had the Property been subject to *ad valorem* taxes, plus a one-time payment due at the closing of the Bonds in the amount of \$250,000.

1.2.2. To the City an annual amount equal to 100% percent of the amount that the City would have received for the respective tax year had the Property been subject to *ad valorem* taxes, with the understanding that 20% of the payment will be deposited in the general fund of the City, and 80% of the payment will be paid to the Special Fund.

1.2.3. To the County an annual amount equal to 20% percent of the amount the County would have received for the respective tax year had the Property been subject to *ad valorem* taxes.

1.2.4. To the City for deposit to the Special Fund 80% of the amount the County would have received for the respective tax year had the Property been subject to *ad valorem* taxes; and 50% of the amount the Library District, Health District and Extension District (the "Special Districts") would have received for the respective tax year had the Property been subject to *ad valorem* taxes.

1.2.5. To the City for deposit to the Special Fund 100% of the amount the Commonwealth of Kentucky would have received for the

respective tax year had the Property been subject to *ad valorem* taxes, but only to the extent the Property is exempt from real property *ad valorem* taxes due to Commonwealth of Kentucky.

1.2.6. The annual payments in lieu of taxes due the School District, the County, and the City shall be computed based on the fair cash assessment of the Property for the tax year, within the respective jurisdiction of the School District, the County, and City, as determined by the PVA, multiplied by the applicable real property tax rate for the respective tax year for the School District, the County, the City and the Special Districts (less any applicable discount if paid during the discount period), multiplied by the percentage due the School District, the County, City as set forth in this Agreement.

(c) Upon the earlier of the date on which the Bonds mature or the date on which the Bonds are no longer outstanding, the Developer will pay to the School District, the County, and the City (and other taxing authorities) *ad valorem* taxes on the Project at the tax rates established at that time on an annual basis in accordance with the assessments on the Project determined by the PVA.

2. The Developer will make the payments in lieu of taxes provided for in this Agreement to the City, County and School District on an annual basis starting the year after the closing of the Bonds, and paid within 30 days after the date the real property *ad valorem* taxes are normally billed for the respective taxing districts, except for the one-time payment of \$250,000 to the School District, which will be paid upon the closing of the Bonds.

3. Other than the *ad valorem* taxes discussed herein, this Agreement does not affect or apply to any other taxes or fees that may be owed by the Developer (or its assignees or tenants) to the City or other taxing authorities. Developer acknowledges that this Agreement is not inconsistent with nor will it conflict with the Bond Placement Agreement, the Trust Indenture, the Financing Agreement, or the Lease Agreement

executed or to be executed in connection with the Bonds, and to the extent that this Agreement is inconsistent or in conflict with these documents, the terms and language of this Agreement shall control over those documents.

4. It is further understood by the parties that the final maturity date of the Bonds shall not exceed thirty (30) years from their date of issuance.

5. All notices sent to the Developer shall be sent to:

Arlington Properties, Inc.
2 North 20th Street, Suite 700
Birmingham, Alabama 35203

All Notices sent to the City shall be sent to:

City of Dayton, Kentucky
514 Sixth Avenue
Dayton, Kentucky 41074
Attention: Mayor

All notices sent to the School Board shall be sent to:

Dayton Independent School District
200 Clay Street
Dayton, Kentucky 41074
Attn: Superintendent

6. Modification. This Agreement may not be changed orally, but only by an agreement in writing executed by the City, the School District and the Developer.

7. Assignment: This Agreement may not be assigned by the Parties absent prior, written consent of the Parties, which shall be appended to this Agreement as an amendment, except to an entity that is formed to develop the Project controlled by the Developer, or to an entity that provides the financing for the Project. In the event that the Parties agree to the assignment, the Developer shall, as part of the assignment,

require that the assignee execute an assumption agreement, assuming all obligations of the Developer under this Agreement.

8. Default. In the event of default in payment as required herein to either the City, the School District, the County or either, which is not cured by the Developer within thirty (30) days after notice as provided for below, then and in that event, it is agreed that the Agreement shall become null and void as of the tax year of the default in payment, and that from that point on, the Developer shall pay an amount equal to one hundred (100%) percent of the amount of *ad valorem* property tax payments that the City, the County and the School District would have derived from the Project but for the exemption of the Project from *ad valorem* taxation pursuant to the provisions of Section 103.285 of the Kentucky Revised Statutes.

In the event that the Developer defaults on any payment owed under this Agreement, the City, the County, or the School District or either shall notify Developer that it is in default and give Developer thirty (30) days to cure the default. In the event that the default is not cured within thirty (30) days, the School District, the County, or the City or either, shall notify the Developer and the PVA that the property is no longer subject to tax exemption and the full amount of *ad valorem* taxes owed to the School District, the County, or the City shall be assessed, starting in the tax year of the default.

9. Effect of Bankruptcy. In the event that the Developer or its assigns shall file a voluntary action seeking relief under applicable bankruptcy laws, or have an involuntary action filed against it seeking such relief, then and in that event, it is agreed that all payments required by this Agreement shall be treated the same as if there were

ad valorem taxes under applicable Kentucky law, giving said payments and obligations preference over all other secured and unsecured creditors.

10. Legally Binding. This Agreement is legally binding upon the parties, the Developer, its officers, affiliates, parents, subsidiaries, shareholders, successors in interests, employees, and agents, and assigns, and upon the School District, or the City.

11. Governing Law and Jurisdiction. The parties agree that this Agreement is governed by the laws of the Commonwealth of Kentucky. Any action taken by each party to enforce or seek relief from the terms and conditions of this Agreement shall be brought in the Campbell Circuit Court.

12. No Third Party Beneficiaries. This Agreement is between the undersigned parties only, and the benefits and obligations hereunder inure only to the undersigned parties, and to the extent set forth in this Agreement. There are no intended nor unintended third party beneficiaries to this Agreement.

(End of Document – Signature Page Follows)

CITY OF DAYTON, KENTUCKY

By: _____
Mayor

ARLINGTON PROPERTIES, INC.

By: _____
Its: _____

DAYTON INDEPENDENT SCHOOL DISTRICT

By: _____
Superintendent

EXHIBIT A

PLAT OF PROJECT PROPERTY

8224063.2