**AGREEMENT IN LIEU OF TAXES**

This Agreement In Lieu of Taxes (this “Agreement”) is dated as of October 25, 2023 (the “Effective Date”), by and among the City of Bellevue, Kentucky (the “City”), the Bellevue Independent School District (the “School District”), and Neyer Properties, Inc., an Ohio corporation, and its successors, assigns and/or transferees (collectively, the “Developer” and, together with the City and the School District, the “Parties”):

**WITNESSETH**

WHEREAS, the Developer and the City have entered into that certain Disposition and Development Agreement dated as of August 11, 2022 (the “Development Agreement”) providing for the redevelopment of certain real property located in the City generally bounded by the Ohio River to the north, Fairfield Avenue to the south, Lafayette Avenue to the east, and Berry Avenue to the west, which real property includes certain City-owned property (Campbell County Parcel Identification Numbers 999-99-05-982.00;999-99-05-982.02; 999-99-05-982.03; 999-99-05-982.04; and 999-99-07-254.00) (the “City-Owned Property”) as well as an approximately .58-acre privately owned parcel (the “Crawford Property”) (Campbell County Parcel Identification Number 999-99-06-456.00) (all as more particularly described in Exhibit A hereto, the “Project Site”); and

WHEREAS**,** under the terms and conditions of the Development Agreement, the Developer has the right to purchase the City-Owned Property subject to certain conditions precedent, including but not limited to the Developer’s acquisition of the Crawford Property; and

WHEREAS, pursuant to the Development Agreement, the Developer has agreed to construct on a portion of the Project Site (the “Private Improvements Project Site”) a mixed-use redevelopment project comprised of: (i) an approximately 160-unit market-rate multi-family apartment development, (ii) an approximately 100-room hotel, (iii) approximately fifteen (15) single-family homes, and (iv) approximately 10,000 square-feet of office and retail space (collectively, the “Private Improvements Project”); and

WHEREAS, to facilitate the development of the Private Improvements Project, the Developer has further agreed to undertake the construction and installation of certain infrastructure improvements consisting of: (i) the installation and construction of structure parking facilities to support the Private Improvements Project (the “Parking Project”), and (ii) the improvement of Lafayette and Berry Avenues and such additional improvements as may be required to support the Private Improvements Project (the “Public Improvements Project” and, together with the Parking Project, the “Infrastructure Project” and, together with the Private Improvements Project, the “Project”); and

WHEREAS, the City has agreed to issue one or more series of its Industrial Building Revenue Bonds to finance the acquisition and construction of the Project (the “Bonds”), including (i) at least one series of bonds to finance the costs of the Private Improvements Project (the “Series A Bonds”), and (ii) at least one series of bonds to finance a portion of the costs of the Infrastructure Project (the “Series B Bonds”); and

WHEREAS, in conjunction with the issuance and sale of the Bonds, the City has further agreed to: (i) accept title to the Private Improvements Project Site and enter into a Lease Agreement with the Developer for the Private Improvements Project Site (the “Project Lease”), and (ii) and in conjunc­tion with the foregoing proposes to enter into this Agreement to memorialize the obligations of the Developer and the future owners (the “Future Owners”) of the parcels comprising the Private Improvements Project Site (each a “Project Parcel”) to make payments in lieu of taxes with respect to the Private Improvements Project Site and each Project Parcel to the City for the benefit of the City, the County, the School District and the holders of the Bonds in the amounts set forth under Section 5 hereof; and

WHEREAS, the Developer and the City have entered into an Inducement Contract, for the City to authorize, issue, and sell the Bonds in an amount specified therein, pursuant to KRS 103.200 through 103.285, to finance the acquisition and construction of the Project; and

WHEREAS, the Bonds will be issued, subject to the terms of a Trust Indenture (the “Trust Indenture”) entered into by and between the City and the bond trustee for the Bonds (the “Trustee”) executed at the time of the issuance and delivery of the Bonds; and

WHEREAS, the economic incentive to the Developer by virtue of the issuance of the Bonds and the execution and delivery of the Project Lease is the abatement of real estate *ad valorem* taxes with respect to the Private Improvements Project Site and all Project Parcels located thereon; and

WHEREAS, it is understood by the City, the School District, and the Developer that the Campbell County Property Valuation Administrator (the “PVA”) is responsible for establishing assessed value of real estate within Campbell County for the purpose of imposing real estate *ad valorem* taxes; and

WHEREAS, it is further understood by the City, School District, and Developer that the payment obligations created by this Agreement shall be secured by an Open-End Leasehold Mortgage, Security Agreement and Agreement as to Real Estate Matters, or similar instrument (the “PILOT Mortgage”) filed against the Private Improvements Project Site as a first priority lien subordinate only to real property taxes, and, to the extent actually received, transferred by the City to the Trustee, as designated by the Trust Indenture to be held and disbursed as required by this Agreement and the Trust Indenture; and

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the City, the School District, and the Developer agree as follows:

1. Recitals. The City, the School District, and the Developer hereafter confirm and affirm the accuracy of the Recitals contained above and those contained herein.
2. Valuation of Private Improvements Project Site and Project Parcels. The valuation of the Private Improvements Project Site and the respective Project Parcels will be the fair cash value the PVA determines and the tax rate used for calculating the PILOT Payments for each respective year will be the then-current tax rate of the City, County or School District, as applicable, for such year. It is understood that the valuation of the Private Improvement Project may change over time as determined by the PVA.
3. Commencement of Obligations. The obligation of the Developer or the Future Owners, as applicable, to make PILOT Payments with respect to the Private Improvements Project will commence on November 1st the year after the date the Bonds are issued and shall be due each November 30th thereafter during the term of the Bonds, and shall be considered delinquent if not paid by November 30th of each year, and shall be the obligation of the Developer until such time as the Project Parcels are sold to Future Owners, in which case each respective Future Owner shall be responsible to make the PILOT Payments attributable to their respective portion of the Private Improvements Project Site (or Project Parcel, as the case may be).
4. Issuance of Bonds/Tax Abatement. Upon the issuance of the Bonds, the conveyance of the Private Improvements Project Site to the City, and the execution and delivery of the Project Lease, the Project Site will be exempt from real property *ad valorem* taxes pursuant to the provisions of Section 103.285 of the Kentucky Revised Statutes, but shall be subject to the payment obligations as set forth in this Agreement, the Project Lease, and the PILOT Mortgage. The term of the exemption from real property *ad valorem* *taxes* with respect to the Private Improvements Project Site shall expire upon the earlier to occur of (i) the termination of the Project Lease, (ii) thirty (30) years from the date the Bonds are issued, or (iii) the date the Bonds are fully paid or defeased (the “Exemption Termination Date”).
5. Obligation to Make PILOT Payments. Beginning the calendar year after the issuance of the Bonds, the Developer and/or the Future Owners, in accordance with this Agreement and the PILOT Mortgage, shall make PILOT Payments, payable to the City, based on a bill issued by the City, prepared in accordance with Section 7 below, in an amount equal to and commensurate with the amount they would have paid based on the assessed value of their respective Project Parcel as determined by the PVA multiplied by the combined local and state *ad valorem* real estate tax rates for each particular tax year but only to the extent of the amount the real estate taxes are abated or exempted. From the PILOT Payments actually received, the City shall pay as follows:
   1. To the City, an amount annually equal to twenty (20%) of real property taxes that the City would have received had the Bonds not been issued, based on the PVA assessment of the Private Improvements Project Site and the respective Project Parcel(s) multiplied by the City’s real property tax rate for each respective tax year (the “City PILOT Payment”);
   2. To the School District, an amount annually equal to twenty (20%) percent of the real property taxes the School District would have received from the Private Improvements Project Site and the respective Project Parcel(s) had the Bonds not been issued, based on the PVA assessment of the Private Improvements Project Site or Project Parcel(s) multiplied by the School District’s real property tax rate for each respective tax year (the “School District PILOT Payment”);
   3. To the County of Campbell, Kentucky (the “County”), an amount annually equal to twenty percent (20%) of the real property taxes the County would have received from the Private Improvements Project Site and the Project Parcel(s), had the Bonds not been issued, based on the PVA assessment of the Private Improvements Project Site and the Project Parcels multiplied by the County’s real property tax rate for each respective tax year (the “County PILOT Payment” and, together with the City PILOT Payment, and the School District PILOT Payment, the “Governmental PILOT Payments”); and
   4. After the payment of the Governmental PILOT Payments, the balance of the PILOT Payments (the “Residual PILOT Payments”) shall be paid by the City to the Trustee to be used as set forth in the Trust Indenture.

It is understood that each Future Owner shall be responsible only for the PILOT Payments attributable to the value of their respective Project Parcel based on the fair cash value of their Project Parcel as determined by the PVA for the applicable tax year.

1. Invoicing. The City on behalf of itself, the County and the School District, shall prepare and send invoices for the PILOT Payments due from the Developer and/or Future Owners each year that such PILOT Payments are due. The invoices shall be in a form, and payable in a manner, substantially similar to and commensurate in all respects with that used by the City, the County and the School District for the invoicing and receipt of *ad valorem* real property taxes. For clarification purposes, the City shall send invoices for the PILOT Payments to the Developer and/or Future Owners by no later than November 1 of each year that the PILOT Payments are due and such invoice shall be payable by no later than November 30th of each year and shall be considered delinquent if not paid by November 30th of each year through the Exemption Termination Date. Any PILOT Payments that are delinquent shall be subject to penalty and interest the same as applicable to City real property taxes and shall be subject to the remedies set forth under Section 12 hereof. Any penalty or interest payments actually received by the City for delinquent Governmental PILOT Payments shall be allocated among the City, the School District and the County based on their respective percentage of Governmental PILOT Payments for the tax year to which such penalty or interest payments are attributable. As compensation for the costs of administering the collection and transfer of Residual PILOT Payments to the Trustee, the City shall retain an amount equal to one percent (1%) of the PILOT Payments actually collected for the then-current tax year; provided that the one percent (1%) fee shall not reduce the Governmental PILOT Payments due to the City, School District or the County as set forth in numerical paragraph 5 of this Agreement.
2. Other Taxes. 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 the Future Owners to the City, the County, the School District or the County. The Developer acknowledges that this Agreement will not be inconsistent or will not conflict with the PILOT Mortgage, Project Lease, Trust Indenture or any bond placement agreement, financing agreement or other instrument, entered into in conjunction with the Bonds, and to the extent that this Agreement is inconsistent or in conflict with any other document, the terms and language of this Agreement shall control.
3. Term of Bonds. 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.
4. School Capital Payment. In addition, to the School District PILOT Payments set forth in Paragraph 5(b) of this Agreement, upon the closing of the Bonds, the Developer shall make a one-time payment to the School District in the amount of $500,000.
5. Start of Construction. The Developer hereby covenants and agrees to commence construction on the Project within two (2) years from the Effective Date (the “Outside Construction Commencement Date”). In the event the Developer fails to commence construction on the Project by the Outside Construction Commencement Date, this Agreement shall be void.
6. Crawford Property. The City and Developer understand that the Crawford Property is currently subject to local real estate *ad valorem* taxes and will not be exempt from taxation until after the Crawford Property is acquired as part of the Project, which shall not occur until the closing of the Bonds. The City and Developer agree to take no action to exempt the Crawford Property from *ad valorem* taxation until the closing of the Bonds.
7. Notices.

All notices sent to the Developer shall be sent to:

Neyer Properties

2135 Dana Avenue, Suite 200

Cincinnati, OH 45207

Attn: Daniel A. Neyer

All notices sent to the City shall be sent to:

City of Bellevue, Kentucky

616 Poplar Street

Bellevue, Kentucky 41073

Attn: Mayor

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

Bellevue Independent School District

219 Center Street

Bellevue, Kentucky 41073

Attn: Superintendent

1. Modification. This Agreement may not be changed orally, but only by an agreement in writing executed by the City, School District and Developer.
2. Default. In the event of default in payment of the PILOT Payments as required hereunder, which is not cured by the Developer or the applicable Future Owner within thirty (30) days (or such longer period approved by the City in writing, provided the Developer or applicable Future Owner is undertaking commercially reasonable efforts to cure such default), then, subject to the rights of the Trustee under the Indenture, Project Lease or PILOT Mortgage, the City shall have all remedies available to it under the Project Lease, the PILOT Mortgage, or under the laws of the Commonwealth of Kentucky (the “Commonwealth”).
3. Effect of Bankruptcy. In the event that the Developer 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 laws of the Commonwealth, giving said payments and obligations preference over all other secured and unsecured creditors.
4. Legally Binding. This Agreement is legally binding upon the City, the School District, and the Developer, its officers, affiliates, shareholders successors in interests, employees, and agents, and assigns and transferees, and the Future Owners.
5. Governing Law and Jurisdiction. The City, School District, and the Developer, agree that this Agreement is governed by the laws of the Commonwealth. Any action taken by the City, School District or Developer to enforce or seek relief from the terms and conditions of this Agreement shall be brought in the Campbell Circuit Court.
6. Entire Agreement. This Agreement contains the entire agreement of the Parties hereto in respect to the transaction contemplated hereby and all prior agreements, whether oral or written, are superseded hereby.
7. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if any provision herein shall be deemed to be invalid such provision shall be ineffective to the extent of such invalidity without invalidating the remainder of the provisions contained in this Agreement.
8. Authorization. The Parties hereto represent that each is duly authorized and empowered to enter into this Agreement.
9. Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original.

(Signatures below)

Signature Page to Agreement In Lieu of Taxes

NEYER PROPERTIES, INC.

an Ohio corporation

By:

Its:

CITY OF BELLEVUE, KENTUCKY

By:

Mayor

BELLEVUE INDEPDENDENT SCHOOL DISTRICT

By:

Superintendent

**EXHIBIT A**

**DESCRIPTION OF PROJECT SITE**

**(To be attached prior to execution)**

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12990061.2