

## **RESOLUTION 20, 2025**

### **PILOT AGREEMENT**

**THIS PAYMENT IN LIEU OF TAXES AGREEMENT** (this “PILOT Agreement”) is dated and made and entered into effective as of this \_\_\_\_ day of \_\_\_\_ 2025 (the “Effective Date”), by and among the CITY OF TERRE HAUTE, a political subdivision of the State of Indiana (the “City”), and TWG TERRE HAUTE, L.P., an Indiana limited partnership, and its permitted successors and assigns (the “Owner”).

### **BACKGROUND/RECITALS**

WHEREAS, the City is a duly organized political subdivision under the laws of the State of Indiana, governed by its duly elected City Council (the “Council”);

WHEREAS, the Owner desires to acquire, develop, construct and operate an affordable multi-family housing apartment project on located in the CITY OF TERRE HAUTE at 50 E. Margaret Avenue, 2 E. Margaret Avenue, 2929 S. 1<sup>st</sup> Street, 2914 Arleth Street, 2900 Arleth Street, 2901 S. 15 Street, which real estate is legally described on **Exhibit A** attached to and made a part of this PILOT Agreement (“Real Estate”), to be known as Wabash Place Apartments (the “Project”) to develop, construct and make available the Project for the purpose of providing decent, safe, sanitary, affordable residential care facilities for low and middle income residents of the City and surrounding area;

WHEREAS, the Project (the “Section 42 Property”) will be developed, constructed and operated for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program under Section 42 of the Internal Revenue Code of 1986, as amended (the “Federal Tax Code”);

WHEREAS, the Project, as a Section 42 Property, will be subject to an extended use agreement under Code Section 42 (the “Extended Use Agreement”) as administered by the Indiana Housing and Community Development Authority (the “IHCDA”) for a period of at least forty (40) years;

WHEREAS, pursuant to the IHCDA Extended Use Agreement the Project, as a Code Section 42 Property, will may only make available and rent to residents whose income is 60% or less of the area median gross income (the “Restricted Residents”);

WHEREAS, pursuant to the IHCDA Extended Use Agreement, the Project, as a Code Section 42 Property will be limited to charges rents as determined in accordance with the IHCDA Extended Use Agreement (the “Restricted Rents”) and in no event will such IHCDA Rents exceed 60% of the area median gross income;

WHEREAS, the Owner has agreed to make certain payment-in-lieu-of-taxes (the “PILOT Agreement”) under the exemption provided in Indiana Code § 6-1.1-10-16.7

WHEREAS, the City is authorized to enter into this PILOT Agreement pursuant to Indiana Code § 36-5-2-0.1 et seq. and Indiana Code § 36-1-8-14.3; and

WHEREAS, to provide for the orderly and timely development of the Project, the Owner and the City have negotiated and seek to enter into this PILOT Agreement which has been approved by the Council.

NOW, THEREFORE, in consideration of the foregoing premises, mutual covenants, and the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## **AGREEMENT**

**Section 1. Owner Compliance.** Owner represents and warrants that it shall be at all times in compliance with the requirements of Indiana Code § 6-1.1-10-16.7 with respect to the ownership, financing and operation of the Real Estate as a multifamily rental housing facility, and during the term of this Agreement, Owner covenants and agrees it shall at all times remain in compliance with the requirements of Indiana Code § 6-1.1-10-16.7. Owner acknowledges that: (i) the mere execution of this Pilot Agreement does not confer any property tax exemption on the Real Estate under Indiana Code § 6-1.1-10-16.7; (ii) in order to obtain any such property tax exemption or partial exemption under IC 6-1.1-10-16.7, the Owner must timely file its Property Tax Exemption Application, including renewal applications, if any are required, with the Vigo County Assessor requesting an exemption pursuant to IC 6-1.1-10-16.7 from Owner's obligation to pay all or any portion of its property taxes on the Real Estate; and (iii) the Owner must meet its burden of proof under Indiana law pursuant to the normal application and determination process applicable to IC 6-1.1-10-16.7 to justify and receive such exemption. The City agrees that during the term of this PILOT Agreement, the City shall not levy, collect or enforce the real estate taxes that they would be entitled to levy and collect if Owner were not exempt therefrom under the PILOT Statute and shall not contest or otherwise challenge the Owner's exemption from such real estate taxes.

**Section 2. Payment In Lieu of Taxes.** The Owner shall pay to the City Controller an annual amount calculated and determined. The amount payable hereunder shall be Thirty-Five Thousand Dollars (\$35,000) (all as adjusted referred to as, the "Annual in Lieu of Amount"). The Annual in Lieu Amount shall increase by 3% each year for the term of this Agreement. The Annual in Lieu Amount payable by Owner with respect to the Real Estate shall be imposed as property taxes and payable in two equal installments due and payable on or before May 10 and November 10 of each successive calendar year, commencing with the first semiannual installment due and payable on or before May 10, 2028 (the "In Lieu of Payments"). [Owner hereby reserves the right to contest and to appeal the amount of any tax assessment of the Real Estate. Any such challenge will not affect the timely payment of the Annual In Lieu of Amount described herein. NOTE; if the Annual in Lieu Amount is based upon a % of assessment, then the appeal rights are more critical] Owner shall be liable for prompt payment of all In Lieu of Payments when due. Owner shall be liable for any penalties for delinquent In Lieu of Payments.

**Section 3. Term and Termination.** This Agreement shall be in effect for fifteen (15) years, with the annual In Lieu Payments commencing for the 2027 pay 2028 tax year. The parties hereto mutually may agree to terminate this PILOT Agreement. Such termination agreement shall be in writing and executed by all parties. Upon mutual termination pursuant to this Section 3, this PILOT Agreement shall become null and void, and of no further force or effect between parties; provided,

however, Owner shall pay the applicable pro rata amount of In Lieu of Payments for the year in which such termination occurs up to the date of termination and receive a credit for all In Lieu of Payments already paid for such year. Upon the last date on which applicable compliance period specified in Section 42(i)(1) of the Federal Tax Code expires, Owner may terminate this PILOT Agreement upon ninety (90) days written notice to the City; provided, however, Owner shall pay the applicable pro rata amount of In Lieu of Payments for the year in which such termination occurs up to the date of termination and receive a credit for all In Lieu of Payments already paid for such year.

#### **Section 4. General Provisions**

**(a) Captions; Incorporation and Exhibit.** The captions and headings of various Articles, Sections and Exhibit referenced herein are for convenience only and are not to be considered as defining or limiting in any way, the scope or intent of the provisions hereof. Notwithstanding the foregoing, each of the Recitals and the Exhibit referenced herein are incorporated and expressly made a part hereof.

**(b) Entire PILOT Agreement.** This PILOT Agreement constitutes the entire agreement of the parties, and all prior discussions, negotiations and document drafts are merged herein. The parties acknowledge and agree that the Original Agreement is hereby amended and restated in its entirety by the terms of this Agreement.

**(c) Notices.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered (effective upon delivery), if sent by reputable overnight courier, charges prepaid (effective the business day following delivery to such courier) or if mailed by United States registered or certified mail, postage prepaid, return receipt requested (effective two business days after mailing):

If to Owner: TWG Terre Haute, LP  
Attn: Marisa Conatser  
1301 E Washington St, Ste 100  
Indianapolis, IN 46202

With a copy to: TWG Development, LLC  
Attn: Dustin Detzler  
1301 E Washington St, Ste 100  
Indianapolis, IN 46202

If to City: City of Terre Haute  
Attn: Mayor Brandon Sakbun

17 Harding Ave.

Terre Haute, IN 47807

With a copy to:

City of Terre Haute

Attn: City Attorney Michael Wright

17 Harding Ave.

Terre Haute, IN 47807

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other manner shall be deemed effective only upon receipt.

**(d) Modification, Amendment or Waiver.** No modification, waiver, amendment, discharge or change of this PILOT Agreement shall be valid unless the same is in writing and signed by all parties to this PILOT Agreement.

**(e) Governing Law.** This PILOT Agreement shall be governed by and construed under the laws of the State of Indiana.

**(f) Time is of the Essence.** Time is hereby declared to be of the essence of this PILOT Agreement and of every part hereof.

**(g) Execution in Counterparts.** This PILOT Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**(h) Severability.** If any provision of this PILOT Agreement is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this PILOT Agreement will not be affected thereby. It is the intention of the parties that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable.

**(i) No Joint Venture.** Nothing contained in this PILOT Agreement will be construed to constitute Owner as a joint venturer with City or to constitute a partnership between Owner and the City.

**(j) Construction.** The parties acknowledge that each party and each party's counsel have reviewed and revised this PILOT Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be

employed in the interpretation of this PILOT Agreement or any amendments or schedules hereto.

**(k) Authorization.** The persons executing and delivering this PILOT Agreement on behalf of the parties hereto represent and warrant to the other party that such person is duly authorized to act for and on behalf of said party, and execute and deliver this PILOT Agreement in such capacity as is indicated below.

**(l) Assignment/Successor.** This PILOT Agreement shall be binding upon City and Owner, and all successor, grantees or assignees of Owner with respect to the Real Estate (or any portion thereof) which would otherwise be entitled to claim an exemption for real property taxes imposed on the Real Estate.

**(m) Recording.** The City will cause, at Owner's expense, this PILOT Agreement and any other instruments of further assurance to be promptly recorded, filed and registered, and at all times to be recorded, filed and registered, in such manner and in such places as may be required by law to preserve and protect fully the rights of the City hereunder as to all of the mortgaged property.

*REMAINDER OF PAGE LEFT INTENTIONALLY BLANK*

**IN WITNESS WHEREOF**, the undersigned parties have caused the execution of this PILOT Agreement by their duly authorized officers as of the day, month and year first above written.

CITY OF TERRE HAUTE

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF INDIANA        )  
                                      ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for said County and State, personally appeared \_\_\_\_\_ as the \_\_\_\_\_, acting for and behalf of the City of Terre Haute, Indiana, and who, having been duly sworn, stated that any and all representations and warranties contained therein are true and correct in all material respects.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Signature

My Commission Expires:

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

*[Executions Continued on Following Page]*

TWG TERRE HAUTE, LP

By: \_\_\_\_\_  
Printed: Louis A. Knoble \_\_\_\_\_  
Title: Authorized Representative \_\_\_\_\_

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for said County and State, personally appeared Louis A. Knoble in the capacity as Manager of TWG GP V, LLC, and Indiana limited liability company, which is the Sole Member of TWG Terre Haute GP, LLC, and Indiana limited liability company, which is the General Partner of TWG Terre Haute, LP, and Indiana limited partnership, who signed the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, executed the same voluntarily on the day the same bears date, and who, having been duly sworn, stated that the representations contained therein at true.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Signature

My Commission Expires:  
\_\_\_\_\_

My County of Residence:  
\_\_\_\_\_

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. \_\_\_\_\_, Attorney at Law.

Introduced by: \_\_\_\_\_ Cheryl Loudermilk, Councilperson

Passed in open Council this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_ Todd Nation, President

ATTEST: \_\_\_\_\_ Michelle L. Edwards, City Clerk

Presented by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2025

at \_\_\_\_\_ o'clock.

\_\_\_\_\_ Michelle L. Edwards, City Clerk

Approved by me, the Mayor, this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_ Brandon C. Sakbun, Mayor

ATTEST: \_\_\_\_\_ Michelle L. Edwards, City Clerk



## **EXHIBIT A**

### **Legal Description**

The following described real estate in the County of Vigo, State of Indiana:

Lot Numbers 5, 6, 7, 8, 9, 14, 15, 16, 17, and 18 in Axtell Park, being a subdivision of part of the Southwest Quarter (Southwest 1/4) of Section Thirty-three (33), Township Twelve (12) North, Range Nine (9) West, in accordance with the recorded plat thereof, dated April 30, 1923 and recorded June 27, 1923 at Plat Record 13, Page 47, in records of the Recorder's Office of Vigo County, Indiana.