

Dated February 18, 2025

PAYMENT IN LIEU OF TAX AGREEMENT¹

between

CITY OF HUNTINGTON BEACH

and

MARISOL HB, LLC

**Relating To The Real Property Located
At 2120 Main Street In The City Of Huntington Beach,
Orange County, California**

¹ NTD: Confirm with the Title Company (First American) that the Agreement is in proper form for recordation.

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PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the “Agreement”) is dated as of [___], 2025, (the “Effective Date”), by and between **CITY OF HUNTINGTON BEACH**, a charter city and municipal corporation of the State of California (the “State”) having an office for the transaction of business at 2000 Main Street, Huntington Beach, California 92648 (the “City”), and **MARISOL HB, LLC**, a California limited liability company, and having its principal place of business at 900 North Michigan Avenue, Suite 1600, Chicago, Illinois 60611 (the “Company”). The City and the Company are sometimes referred to individually herein as a “party” and, collectively, as the “parties.”

WITNESSETH:

WHEREAS, the Company intends to become the owner of that certain real property located at 2120 Main Street located within the City of Huntington, County of Orange, State of California and further described in Exhibit A, annexed hereto (the “Project Site”);

WHEREAS, the Company intends to develop a portion of the Project Site into a senior living community consisting of approximately 214 senior living units (the Project Site, as it may be developed from time to time is referred to herein as the “Property”);

WHEREAS, the Company expects to finance the purchase and development of the Project Site with proceeds of tax-exempt bonds to be issued by the California Public Finance Authority;

WHEREAS, at the Company’s request, the City Council of the City held a public hearing and gave its limited approval of such tax-exempt bonds, as required by the Tax Equity and Fiscal Responsibility Act;

WHEREAS, pursuant to Section 214(f) of the Cal. Rev. & Tax Code (the “Statute”), property used exclusively for housing and related facilities for elderly or handicapped families, at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are provided, and that is owned by an entity that is organized and operated for charitable purposes, shall be exempt from the payment of property taxes;

WHEREAS, the sole member of the Company is The Bluhm Family Foundation, a trust that is recognized by the Internal Revenue Service as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code (“IRC”), and that intends to apply to the California Franchise Tax Board for recognition as a tax-exempt charitable organization under Section 23701d of the Cal. Rev. & Tax Code (“RTC”), and to obtain an Organizational Clearance Certificate (“OCC”) from the California Board of Equalization (“BOE”);

WHEREAS, the parties acknowledge that the Company intends to obtain an OCC from the BOE and annually file Form BOE-267, Claim for Welfare Exemption, with the Orange County Assessor (the “Assessor”) in order for the Property to become exempt from the payment of property taxes; and

WHEREAS, the City and the Company have agreed to enter into this Agreement whereby the Company agrees to make certain PILOT Payments (as defined below) to the City (or its designee).

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

TERM

Section 1.01 Term. The term of this Agreement shall commence as of the Effective Date and shall terminate upon the earlier of (i) twelve (12) months from the Effective Date if the Company has not acquired the Property during such 12-month period, or (ii) the date of sale of the Property by the Company to a purchaser that is not exempt from tax under IRC Section 501(c)(3) or RTC Section 23701d or wholly-owned by such an entity.

Section 1.02 Recordation. Promptly following the Company's acquisition of the Property, this Agreement shall be recorded against the Property. This Agreement shall run with the land and be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Upon the sale of the Property by the Company to an entity that is exempt from tax under IRC Section 501(c)(3) or RTC Section 23701d or wholly-owned by such an entity, the Company shall be released of all obligations hereunder, and the purchaser of the Property shall be deemed to have assumed and become liable for all of the obligations of the Company hereunder.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations of and Warranties by the City. The City does hereby represent, warrant and covenant as follows:

(a) **Power.** The City is a charter city and municipal corporation of the State and has the power under the laws of the State to enter into this Agreement and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) **Authorization.** By proper action on the part of its City Council, the City has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(c) **Conflicts.** The City is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by any order, judgment, or decree of any court.

(d) **Valid Obligation.** This Agreement is a valid and binding obligation of the City, enforceable against the City in accordance with its respective terms.

Section 2.02 Representations of and Warranties by the Company. The Company does hereby represent, warrant and covenant as follows:

(a) **Power.** The Company is a limited liability company duly organized and validly existing under the laws of the State of California, is duly qualified to do business in the State of California, and has the power under the laws of the State of California to enter into this

Agreement and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) Authorization. By proper action on the part of the Company and its member, the Company has been duly authorized to execute, deliver and perform this Agreement and to consummate the transactions herein contemplated.

(c) Conflicts. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement, or any other restriction, law, rule, regulation or order of any court of other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which the Company or any of its property is bound, and neither the Company's entering into this Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditor's rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(d) Governmental Consents. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

(e) Liens. No liens have attached to or been filed against the Company or the assets of the Company in favor of any governmental or private entity, and no judgments have been entered against the Company which remain unsatisfied or outstanding.

(f) Valid Obligation. This Agreement is a valid and binding obligation of the Company, enforceable against the Company in accordance with its respective terms.

(g) No Material Litigation. There is no pending or threatened action, suit, proceeding or claim affecting the Company, or any of its assets, before any court, governmental agency or arbitrator which may materially adversely affect the assets, properties, condition (financial or otherwise) or operations of the Company.

(h) Criminal Actions. There are no criminal actions, suits, demands, claims, hearings, or notices, notices of violation, potential liabilities, investigations, or proceedings pending or threatened against the Company or assets of the Company.

(i) No Defaults. The Company is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any agreement, instrument or contract to which it is a party or by which the Company or any of its assets or properties are bound.

(j) Taxes. The Company has filed or caused to be filed all federal, state and local tax returns which are required to be filed, if any, and has paid or caused to be paid all taxes as shown on its returns or on any assessment received by it in writing, to the extent that such taxes have become due. The Company has no actual knowledge of any claims for past due taxes upon its assets or properties.

ARTICLE III

PILOT PAYMENTS

Section 3.01 Tax-Exempt Status of the Property. The parties hereby acknowledge that the Company will operate the Property, and take such other actions as it may deem necessary in its sole discretion, in order to claim the maximum exemption available for the Property under the Statute. The parties further hereby acknowledge that the Assessor is responsible for granting any such exemption, in whole or in part, if any. Any such grant by the Assessor is referred to herein as a “Property Tax Exemption.” The City will not oppose the Company’s efforts to obtain and preserve the tax-exempt status of the Property during the term of this Agreement.

Section 3.02 Payments In Lieu Of Taxes.

(a) Agreement to Make Payments. To the extent that, and so long as, a portion of the Property is entered upon the assessment rolls as exempt, the Company agrees that it shall make payments in lieu of property taxes to the City at the times and in the amounts hereinafter provided in Section 3.02(b) hereof, if any, with respect to the Property (each such payment, a “PILOT Payment” and collectively, “PILOT Payments”).

(b) Amount of Payments in Lieu of Taxes. The PILOT Payment shall be paid by the Company to the City on the same schedule that property tax payments would otherwise be due but for the Property Tax Exemption (*i.e.*, for the 2025 fiscal year, the first installment will be paid on November 1, 2025 and the second installment will be paid on February 1, 2026). The PILOT Payment shall be equal to the City’s portion of property taxes that would have otherwise been due to the City but for the Property Tax Exemption and shall be subject to adjustments at the same rate that property taxes for the Property would have otherwise been adjusted but for the Property Tax Exemption. For the avoidance of doubt, the Non-Exempt Taxes (as defined below) will not be included in the PILOT Payment.

(c) Non-Exempt Portion. If a portion of the Property remains subject to the payment of property taxes as determined by the Assessor, then the Company shall pay to the applicable taxing entity (rather than directly to the City) when due such property taxes (“Non-Exempt Taxes”) for the non-exempt portion of the Property.

(d) Time and Method of Payments. The obligation of the Company to make the PILOT Payment pursuant to this Agreement with respect to the Property shall commence on the Effective Date, and, thereafter, the PILOT Payment shall be due as set forth herein, and Non-

Exempt Taxes, if any, will be due as billed. No PILOT Payments shall be due until the Company's initial claim for tax exemption for the Property has been granted by the Assessor. Payments by the Company hereunder shall be made to the City by check in lawful money of the United States of America or by electronic transfer of funds, as the Company may elect. The Company shall be entitled to receive receipts for such payments.

Section 3.03 Additional PILOT Payments. If the Company is eligible for additional tax or fee exemptions with respect to other taxes or fees payable by the Company to the City, including but not limited to sales and use taxes, utility users taxes and/or transient occupancy taxes ("Additional Exempt Taxes and Fees"), then, to the extent the Company actually receives such tax or fee exemptions, the Company shall pay to the City an amount ("Additional PILOT Payment") equal to the City's portion of such Additional Exempt Taxes and Fees not paid by the Company on account of its tax or fee exempt status that would have otherwise been due to the City. Such Additional PILOT Payments shall be made on the same schedule that the applicable tax payments would otherwise be due but for the exemption granted from the Additional Exempt Taxes and Fees.

Section 3.04 Reserved.

Section 3.05 Annual Assessments. If any portion of the Property is not subject to an annual assessment because it is subject to the Property Tax Exemption, the Company will request that the Assessor provide what would have been the assessed valuation of such portion of the Property annually as though such portion of the Property was not subject to the Property Tax Exemption.

Section 3.06 Books and Records. At the time that the Company delivers each PILOT Payment and Additional PILOT Payment to the City, the Company shall provide written documentation of the methodology used to calculate the amount of such payments, such as, by way of example and not exclusively, the property tax statement delivered to the Company by the Assessor for the Property or other indicia of the Property's assessed value reasonably acceptable to the City.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.01 Events Of Default. Any one or more of the following events shall constitute an event of default under this Agreement (an "Event of Default");

(a) Failure of the Company to pay or perform any of its obligations under this Agreement within thirty (30) days after notice of such failure; provided, however, in the event of a non-monetary default, if such default cannot reasonably be cured within such thirty (30) day period, and if the Company shall have commenced to cure the breach of covenant, condition or agreement within this thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default; or

(b) Any representation or warranty by the Company contained in this Agreement shall prove to have been false or incorrect in any material respect as of the Effective Date.

Section 4.02 Remedies On Default.

(a) General. Whenever any Event of Default shall have occurred with respect to this Agreement, the City may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations of the Company under this Agreement. With respect to an Event of Default under Section 4.01(a), any unpaid PILOT Payments or Additional PILOT Payments shall bear interest at the rate that would have accrued on such payments had the Property Tax Exemption not been granted with respect to the PILOT Payments or had the additional fee or tax exemptions not been granted with respect to the Additional PILOT Payments, as applicable.

(b) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

Section 4.03 Payment of Attorney's Fees and Expenses. If the Company defaults in performing any of its obligations under this Agreement and the City engages outside counsel or incurs other expenses in connection with the collection of any amounts payable hereunder or for the enforcement of any such obligations, the Company will promptly pay to the City, not only the amounts adjudicated to be due hereunder, together with any late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such outside counsel and all other reasonable out-of-pocket expenses, costs and disbursements so incurred, whether or not an action is commenced.

Section 4.04 Remedies; Waiver And Notice.

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give notice, other than such notice required in this Agreement.

(d) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

Section 5.01 Development of Property. Notwithstanding the tax-exempt status of the Company, the Company will develop the Property in accordance with all ordinances, rules and regulations of the City that would be applicable to the Property if the Company were not a tax-exempt entity.

Section 5.02 Form of Payments. The amounts payable under this Agreement shall be payable in such currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Section 5.03 Amendments. This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

Section 5.04 Notices.

(a) General: All notices, certificates or other communications hereunder shall be in writing and may be personally served or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given (1) when delivered in person or by courier at the applicable address stated below, (2) when delivered by nationally recognized overnight delivery service, such as Federal Express or UPS, (3) three (3) business days after deposit in the United States by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery.

(b) Addresses. The addresses to which notices, certificates and other communications hereunder by the City or the Company shall be sent as follows:

IF TO THE COMPANY:

Marisol HB, LLC
c/o Bluhm Family Foundation
900 N. Michigan Avenue, Suite 1600
Chicago, IL 60611-1575
Attn: Andrew G. Bluhm and Amy Close

WITH A COPY TO:

White & Case LLP
111 South Wacker Drive
51st Floor
Chicago, IL 60606-4302
Attn: Eugene J.M. Leone, Esq. (Re: 1750895-0078)

IF TO THE CITY:

City of Huntington Beach

2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager

WITH A COPY TO:

Kutak Rock LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614
Attn: Cyrus Torabi, Esq. (Re: 76517-1)

(c) Change of Address. The City or the Company, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 5.05 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the City, the Company and their respective successors and assigns.

Section 5.06 Severability. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

Section 5.07 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To facilitate execution of this Agreement, the parties may execute and exchange counterparts by fax or by email in PDF.

Section 5.08 Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without reference to its conflicts of law principles.

Section 5.09 Entire Agreement. This Agreement is intended by the parties as the final, complete and exclusive statement of the transactions evidenced by this Agreement. All prior or contemporaneous promises, agreements and understandings, whether oral or written, are deemed to be superseded by this Agreement, and no party is relying on any promise, agreement or understanding not set forth in this Agreement. This Agreement may not be amended or modified except by a written instrument describing such amendment or modification executed by City and the Company and duly recorded.

Section 5.10 Defined Terms. Capitalized terms used herein shall have the meanings assigned to such terms herein, unless the context or use indicates another or different meaning or intent.

Section 5.11 No Recourse. All obligations, covenants and agreements of either party hereto contained in this Agreement shall be deemed to be the obligations, covenants and agreements of such party and not of any member, officer, agent, servant or employee of such party in his, her or its individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based upon or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member of such party, any officer, agent, servant or employee of such party, or any past, present or future member thereof, it being expressly understood that this Agreement is an obligation solely of each party, and that no such personal liability whatsoever shall attach to, or is or shall be incurred by, any such member, officer, agent, servant or employee of either party or of any successor thereto, or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement by the parties.

(Remainder of Page Left Blank)

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective names by duly authorized officers thereof.

CITY:

CITY OF HUNTINGTON BEACH

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM
By: *Pre Don*
MICHAEL E. GATES
CITY ATTORNEY
CITY OF HUNTINGTON BEACH

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said state, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

My commission expires: _____

[Signatures continue on the following page]

MARISOL HB, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said state, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that _____ the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

My commission expires: _____

[End of Signatures]

EXHIBIT A

Legal Description of the Project Site

The Land referred to herein below is situated in the City of Huntington Beach, County of Orange, State of California, and is described as follows:

Parcel A:

Parcel 1, as shown on that certain PARCEL MAP NO. 2020-128, filed in the office of the recorder of the County of Orange, State of California on November 21, 2022 as Book 411 of Maps, Page(s) 22 through 30.

Parcel B:

Nonexclusive easements for surface ingress and egress purposes as described in that certain Declaration of Reciprocal Easement recorded August 12, 1981 in Book 14178, Page 558, of Official Records.

Parcel C:

Nonexclusive easements for pedestrian and vehicular ingress and egress as described in that certain document entitled "Access Easement Agreement" recorded October 09, 1984 as Instrument No. 84-416712, of Official Records.

APN: 023-631-01