

**AGREEMENT FOR PAYMENTS IN LIEU  
OF AD VALOREM TAXES**

**THIS AGREEMENT** is made and entered into as of the 6th day of April , 2016, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, a public corporation duly created and existing under the laws of the State of Tennessee (the "Board"); HERITAGE - MACLELLAN APARTMENTS, LLC, a Delaware limited liability company (the "Company"); the CITY OF CHATTANOOGA (the "City"); and HAMILTON COUNTY (the "County") and is joined in, for purposes of evidencing their acceptance of the agency relationship established herein, by WILLIAM F. HULLANDER and his successors, acting in the capacity of HAMILTON COUNTY TRUSTEE ("Trustee"), and by WILLIAM C. BENNETT and his successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY ("Assessor").

**WITNESSETH:**

**WHEREAS**, the Company is contemplating a renovation of the historic Maclellan Building including the construction of apartments with mixed sizes of 40 studio, 42 one (1) bedroom, and 8 two (2) bedroom units (collectively, the "Project"), and has requested the Board's assistance in the financing of the Project; and

**WHEREAS**, substantial public welfare benefits to the City and County will be derived from the Project; and

**WHEREAS**, the Board has agreed to take title to certain real and personal property that constitutes the Project, as described in Exhibit "A" attached hereto (the "Property"), which Property is to be owned by the Board and leased to the Company; and

**WHEREAS**, because the Property is to be owned by the Board, which is a public corporation organized under the provisions of Tennessee Code Annotated, §48-101-301, et seq.,

all such property will be exempt from ad valorem property taxes (“property taxes”) normally paid to the City and to the County, so long as the Property is owned by the Board, pursuant to the provisions of Tennessee Code Annotated, §48-101-312; and

**WHEREAS**, for the public benefit of the citizens of the City and the County, the Board has requested that the Company make certain payments to the Board in lieu of the payment of property taxes that would otherwise be payable on the Property; and

**WHEREAS**, the Company has agreed to make such payments to the Board in lieu of the property taxes otherwise payable on the Property (the “In Lieu Payments”), as more particularly set forth hereinafter; and

**WHEREAS**, the Board has been authorized to receive the In Lieu Payments in lieu of property taxes by resolutions adopted by the City and the County, acting through their duly elected Council and Commission, respectively, which resolutions delegate to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions; and

**WHEREAS**, the Company and the Board have agreed that all In Lieu Payments made to the Board by the Company shall be paid to the Trustee, who shall disburse such amounts to the general funds of the City and the County in accordance with the requirements specified herein; and

**WHEREAS**, the Board wishes to designate the County Assessor as its agent to appraise the Property and assess a percentage of its value in the manner specified herein; and

**WHEREAS**, the Board wishes to designate the Trustee as its agent to receive the In Lieu Payments in accordance with the terms of this Agreement;

**NOW, THEREFORE, IN CONSIDERATION OF** the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. Designation of Assessor; Appraisal and Assessment of Property. The Board hereby designates the Assessor as its agent to appraise and assess the Property. The Assessor shall appraise and assess the Property in accordance with the Constitution and laws of the State of Tennessee as though the Property were subject to property taxes. The Assessor shall give the Trustee, the City Treasurer, the Board, and the Company written notice of any changes in appraisals of the Property in the same manner that notices are given to owners of taxable property. The Assessor shall make available to the Board and the Company all records relating to the appraisal and assessment of the Property.

2. Designation of Trustee; Computation and Billing of Payments In Lieu of Taxes. The Board hereby designates the Trustee as its agent to compute the amounts of the In Lieu Payments, to receive such payments from the Company and to disburse such payments to the City and the County. On or about October 1 of each year during the term of this agreement, the Trustee shall compute the taxes which would be payable on the Property if it were subject to property taxes, in accordance with the Constitution and laws of the State of Tennessee and in accordance with the appraisal and assessment of the Assessor. Each year hereunder, the Trustee shall send the Board and the Company a bill for appropriate amounts of In Lieu Payments (the "Tax Bill").

3. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Company shall pay to the Trustee the amounts indicated on the Tax Bill to be paid to the County and the Company shall pay to the City Treasurer the amounts on the Tax Bill to be paid to the City in accordance with the amount set forth below in Paragraph 4. The In Lieu Payments shall be made by the Company in lieu of the property taxes which would otherwise be payable on the Property if it were subject to property taxes.

4. Amount of Payments by the Company.

(a) Property Exclusive of Improvements. For each of the years 2015 and thereafter, the Company shall make payments with respect to the Property in an amount equal to one hundred percent (100%) of all City and County annual ad valorem property taxes levied in the base year of 2015 (the “Base Year”) on the value of the associated Property (land, buildings, etc.). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the value of the property in the Base Year exclusive of the improvements made in connection with the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Improvements. After construction of the Project is completed and the Assessor of Property has reassessed the then improved Property, the Company shall make In Lieu Payments in the amount required to satisfy the Hamilton County Schools portion of the property taxes that would be due on the improvements to the Property if it were subject to taxation (the “School Portion”), which the parties acknowledge and agree currently equates to 27.1% of the amount of the total City and County taxes that would have been payable on the improvements to the Property if it were subject to property taxes. Additional In Lieu Payments on the improvements will be as follows:

Year	City General Fund <sup>(1)</sup>	County General Fund <sup>(1)</sup>	County School Fund <sup>(1)</sup>
2016 – 2029	0%	0%	100%
2030	20%	20%	100%
2031	40%	40%	100%
2032	60%	60%	100%
2033	80%	80%	100%
2034	100%	100%	100%

<sup>(1)</sup> – The above percentages refer to the percent of the amount of taxes that would have been payable on the improvements to the Property if it were subject to property taxes.

As noted above, during such years 2016 to 2034, the Company shall continue to pay the School Portion attributable to the Hamilton County Schools. For any periods before or after such 18-year period that the Property is owned by the Board, the Company shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would have been payable on the Property if it were subject to property taxes.

(c) For each of the years 2016 to 2034, the Company shall make In Lieu Payments with respect to the commercial and retail space on the first floor of the Property in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would have been payable on that portion of the Property if it were subject to property taxes.

5. Penalties and Late Charges. The Company shall make the In Lieu Payments for each year before March 1 of the following year. All In Lieu Payments to the City and County shall be subject to penalties, late charges, fees and interest charges as follows:

(a) If the Company fails to make any In Lieu Payment when due, then a late charge shall be charged and shall also be immediately due and payable. The late charge shall be in the amount of one and one-half percent (1½%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1½%) per month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If the Company should fail to pay all amounts and late charges due as provided hereinabove, then the Board, the City or the County may bring suit in the Chancery Court of Hamilton County to seek to recover the In Lieu Payments due, late charges, expenses and costs

of collection in addition to reasonable attorneys' fees, and if the Company should fail to pay all amounts and late charges due as provided hereinabove for more than two (2) years, the City or the County may, as to their respective In Lieu Payments, terminate the benefits of this Agreement and thereafter require the Company to pay one hundred percent (100%) of the amount of taxes that would have been payable on the Property for so long as such payment default continues as determined by the Mayor of the City and the Mayor of the County. In the event of a disagreement between the parties concerning whether or not the Company has cured a default, a representative of the Company may request that the City and County, as applicable, each meet to determine whether such default has been cured; and the Company and the City or the County, as the case may be, shall meet promptly thereafter attempt in good faith to resolve such dispute. The Company may, in addition, file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

(c) If the Company should fail to reserve for lease at least twenty (20%) percent of the available units in the Project to persons whose income does not exceed eighty (80%) percent of the area median income as annually defined in the most recent guidelines published by the Department of Housing and Urban Development, then the City and the County reserve the right but are not obligated to adjust the terms and conditions of the tax abatement granted to the Company under this Agreement for the Tax Abatement Period by requiring the Company to pay an additional amount of the In Lieu Payments on the Property. The City and the County may then require the Company to pay an amount up to the difference between the amounts of the In Lieu Payments required pursuant to Paragraph 4 of this Agreement and the amounts that the Company would have paid using the pro-rated percentage of the affordable housing units associated with the

Tax Abatement Period. The County and the City shall look solely to the Company for any repayment obligations.

6. Disbursements by the Treasurer and Trustee. All sums received by the Treasurer pursuant to Paragraph 4 for the benefit of the City general fund shall be disbursed to the general funds of the City in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All sums received by the Trustee pursuant to Paragraph 4 for the benefit of the County general fund shall be disbursed to the general fund of the County in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All such sums received by the Treasurer shall be placed into an account for the use and benefit of the City. All such sums received by the Trustee shall be divided into an account for the use and benefit of the County. The account for the use and benefit of the City shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the City, and the account for the use and benefit of the County shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the County. All sums received by the Trustee pursuant to Paragraph 4 for the benefit of the County school system shall be disbursed to the County and thereafter deposited into an account for the educational use and benefit of the County schools. The parties acknowledge and agree that all disbursements to the City and County pursuant to this Agreement are in furtherance of the Board's purposes as set forth in Tennessee Code Annotated §7-53-305.

7. Contest by the Company. The Company shall have the right to contest the appraisal or assessment of the Property by the Assessor and the computation by the Trustee of the amount of

the In Lieu Payment. If the Company contests any such appraisal or assessment, then it shall present evidence to the Assessor in favor of its position. Likewise, if the Company contests any such computation, it shall present evidence to the Trustee in favor of its position. If the In Lieu Payments being contested shall be or become due and payable, the Company shall make such payments under protest. The Company and the Assessor or the Trustee, as the case may be, shall negotiate in good faith to resolve any disputes as to appraisal, assessment or computation. If the Company and the Assessor or the Trustee are unable to resolve a dispute, then the Company may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment and computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

8. Annual Report. The Company will provide, on or before January 31 of each calendar year during this Agreement, an annual report to the Board, the Mayor of the City, and the Mayor of the County, summarizing its investment in the Property and a certified rent roll. An independent audit of the annual report may occur if requested by the City or County during any calendar year of this Agreement.

9. Lien on Property. Any amounts which remain payable under this Agreement shall become a lien on the Property, and such lien shall be enforceable against the Property in the event that any payment owing hereunder is not timely made in accordance with this Agreement.

10. Term. This Agreement shall become effective on the date that the Board attains title to the Property and shall continue for so long as the Board holds title to any of the Property or the Company has made all payments required hereunder, whichever shall later occur.

11. Leasehold Taxation. If the leasehold interest of the Company should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In



Lieu Payments due hereunder. The Company agrees to cooperate fully with the Assessor in supplying information for completion of leasehold taxation questionnaires with respect to the Property.

12. Stormwater Fees. In addition to other requirements under this Agreement, the Company shall be responsible for all stormwater fees assessed by the City of Chattanooga against the Real Property.

13. Notices, etc. All notices and other communications provided for hereunder shall be written (including facsimile transmission and telex), and mailed or sent via facsimile transmission or delivered, if to the City or the Board, c/o Mr. Phillip A. Noblett, Suite 200, 100 E. 11<sup>th</sup> Street, Chattanooga, Tennessee 37402; if to the County, c/o Mr. Rheubin M. Taylor, County Attorney, Hamilton County Government, Room 204, County Courthouse, Chattanooga, Tennessee 37402-1956; if to the Company, c/o Mr. William M. Yandell, III, Heritage - Maclellan Apartments, LLC, 5350 Poplar Avenue, Suite 730, Memphis, Tennessee 38119; if to the Trustee, at his address at Hamilton County Courthouse, Chattanooga, Tennessee 37402; and if to the Assessor, at his address at Hamilton County Courthouse, Chattanooga, Tennessee 37402; or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall, when mailed by registered and certified mail, return receipt requested, Express Mail, or facsimile, be effective when deposited in the mails or if sent upon facsimile transmission, confirmed electronically, respectively, addressed as aforesaid.

14. No Waiver; Remedies. No failure on the part of any party hereto, and no delay in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or

the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

15. Assignment. Except as provided in this Section, the Company may only assign this Agreement, or any part hereof, with the prior consent of the Mayor of the City, the Mayor of the County, and the Board. The Mayor of the City, the Mayor of the County and/or the Board shall not withhold such consent upon the occurrence of all of the following conditions: (i) there is no default under this Agreement at the time of the assignment, (ii) all requirements of the Company under this Agreement have been satisfied as of the date of the assignment, and (iii) any assignee agrees to provide proof of sufficient assets to fund the business plan for the Project and agrees to be bound by the terms of this Agreement from and after the date of assignment (the "Consent Requirements"). If the Company provides the Mayor of the City, the Mayor of the County and the Board (x) a certificate of an officer of the Company certifying that the requirements of (i) and (ii) have been satisfied and (y) proof of sufficient assets to fund the business plan for the Project and a copy of an assignment and assumption agreement pursuant to which the assignee agrees to be bound by the terms of this Agreement, the Mayor of the City, the Mayor of the County and the Board shall each have the option, upon at least seven (7) days' prior notice to the Company, to meet with a representative of the Company within forty-five (45) days of receipt of the Company's certificate for purposes of determining whether the Company has satisfied the Consent Requirements. Unless the Mayor of the City, the Mayor of the County and the Board meet with the Company and all state in writing within such forty-five (45) day period that the Company has not satisfied the Consent Requirements, the Company may assign this Agreement in accordance with the terms and conditions described in the Company's certificate without any further action of the Mayor of the City, the Mayor of the County and/or the Board. In the event that the Mayor of the

City, the Mayor of the County and the Board timely state in writing that the Company has not satisfied the Consent Requirements, the Company and the assignee may, upon the Company's request, appear before the City Council of the City, the Board of Commissioners of the County and the Board to request approval of such assignment pursuant to the terms of this Section, which consents shall not be unreasonably withheld. Upon satisfaction of the requirements of this Section, the assignment shall relieve the Company from liability for any of its obligations hereunder as of the effective date of the assignment.

16. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court or jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions of this Agreement.

17. No Liability of Board's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, of the Board, whether past, present or future, either directly or through the Board. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and signatories hereto and to their respective successors and assigns.

19. Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

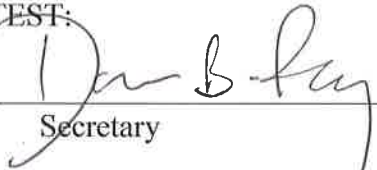
20. Amendments. This Agreement may be amended only in writing, signed by each of the parties hereto, except that the Trustee and the Assessor shall not be required to join in amendments unless such amendments affect their respective duties hereunder.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

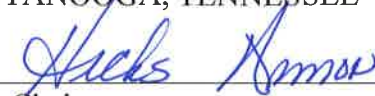
ATTEST:

By: \_\_\_\_\_

  
Secretary

THE HEALTH, EDUCATIONAL AND HOUSING  
FACILITY BOARD OF THE CITY OF  
CHATTANOOGA, TENNESSEE

By: \_\_\_\_\_

  
Chairman

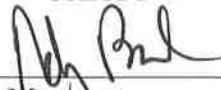
HERITAGE - MACLELLAN APARTMENTS, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF CHATTANOOGA, TENNESSEE

By: \_\_\_\_\_

  
Mayor

HAMILTON COUNTY, TENNESSEE

By: \_\_\_\_\_

County Mayor

WILLIAM F. HULLANDER

By: \_\_\_\_\_

Hamilton County Trustee

WILLIAM C. BENNETT

By: \_\_\_\_\_

Hamilton County Assessor of  
Property

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

ATTEST:

THE HEALTH, EDUCATIONAL AND HOUSING  
FACILITY BOARD OF THE CITY OF  
CHATTANOOGA, TENNESSEE

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman

HERITAGE - MACLELLAN APARTMENTS, LLC

By:   
Title: President

CITY OF CHATTANOOGA, TENNESSEE

By: \_\_\_\_\_  
Mayor

HAMILTON COUNTY, TENNESSEE

By: \_\_\_\_\_  
County Mayor

WILLIAM F. HULLANDER

By: \_\_\_\_\_  
Hamilton County Trustee

WILLIAM C. BENNETT

By: \_\_\_\_\_  
Hamilton County Assessor of  
Property

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THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE

ATTEST:

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman

HERITAGE - MACLELLAN APARTMENTS, LLC

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

CITY OF CHATTANOOGA, TENNESSEE

By: \_\_\_\_\_  
Mayor

HAMILTON COUNTY, TENNESSEE

By: J. M. Cappiz  
County Mayor

WILLIAM F. HULLANDER

By: William F. Hullander  
Hamilton County Trustee

WILLIAM C. BENNETT

By: William C. Bennett  
Hamilton County Assessor of Property

**EXHIBIT "A"**  
**TO AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES**

REAL PROPERTY

Land situated in Hamilton County, Tennessee:

Being a part of Lots Fifty-two (52) and Fifty-four (54), Original Town, City of Chattanooga, and being more particularly described according to plat of survey prepared by Betts Engineering Associates, Inc., drawing no. 3492-365-Z05, as follows:

To locate the point of beginning, begin at the intersection of the West line of Broad Street with the North line of East Eighth Street and then go North 00 degrees 02 minutes 00 seconds West, with and along the West line of Broad Street, 137 feet to the point of beginning which is located in the North line of an alley; thence North 89 degrees 58 minutes 05 seconds West, with and along said North line of said alley, 99.11 feet; thence South 00 degrees 03 minutes East 0.73 feet; thence South 88 degrees 48 minutes 00 seconds West 27.11 feet; thence South 00 degrees 03 minutes West 11.31 feet to the North face of the building located on the property conveyed to Blue Cross and Blue Shield of Tennessee, a Tennessee Corporation, by Deed of record in Book 2364, Page 407, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 59 minutes S4 seconds West, with and along said building North face, 110 feet to a point in the East line of Chestnut Street; thence North 00 degrees 07 minutes East, with and along the East line of Chestnut Street, 84.94 feet in a point on the South face of the South wall of the Tivoli Theatre (being the property conveyed to the City of Chattanooga, Tennessee by Deed of record in Book 2304, Page 743, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 57 minutes 47 seconds East, with and along the South face of the South wall of the Tivoli Theatre 118.09 feet, to a point where the South face of the South wall of the Tivoli Theatre turns and runs in a Northeastwardly direction; thence North 50 degrees 19 minutes 19 seconds East, with and along the Southeast face of the Southeast wall of the Tivoli Theatre, 15.62 feet to a point where the Southeast face of the Southeast wall of the Tivoli Theatre turns and runs in a Northwardly direction; thence North 00 degrees 07 minutes 01 seconds West, with and along the East face of the East wall of the Tivoli Theatre, 40.86 feet, to a point where the East face of the East wall of the Tivoli Theatre turns and runs in an Eastwardly direction; thence South 89 degrees 57 minutes 11 seconds East, with and along the South face of the South wall of the Tivoli Theatre, 105.95 feet, to a point in the West line of Broad Street; thence South 00 degrees 02 minutes East, with and along the West line of Broad Street, 123.21 feet to the point of beginning.

TOGETHER WITH all rights appurtenant thereto by virtue of the following language appearing in Deed of record in Book V, Volume 17, Page 689, in the Register's Office of Hamilton County, Tennessee: "and the Grantor agrees for himself, heirs and assigns, to maintain as a private way the twelve (12) foot alley between the James Building and said Annex Building, as now opened," as affected by Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.

TOGETHER WITH such other rights as are appurtenant thereto by virtue of Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.



PERSONAL PROPERTY

All personal property used by the Company in connection with its housing facility located on the real property described above.