

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

THIS AGREEMENT is made and entered into as of October 1, 2005, by and among **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE** (the "Board"); **MK, LLC**, a Tennessee limited liability company ("MK"); 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 **CARL E. LEVI** 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, MK is contemplating the redevelopment and renovation of a multi-family housing facilities located at 1419 Market Street in the Southside downtown area of Chattanooga, Hamilton County, Tennessee (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 constituting the Project, as described in Exhibit "A" attached hereto (the "Property"), which Property is to be owned by the Board and leased to MK; 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 MK make certain payments to the Board in lieu of the payment of property taxes that would otherwise be payable on the Property; and

WHEREAS, MK 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, MK and the Board have agreed that all In Lieu Payments made to the Board by MK 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 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 MK 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 MK 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 MK 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 MK a bill for appropriate amounts of In Lieu Payments (the "Tax Bill").

3. Payments in Lieu of Taxes. After receipt of the Tax Bill, MK shall pay to the Trustee the amounts indicated on the Tax Bill in accordance with the amount set forth below in Paragraph 4. The In Lieu Payments shall be made by MK 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 MK. For each of the years 2006 to 2017, MK shall make In Lieu Payments in an amount equal to the annual ad valorem property tax for the Property for the year 2005 (the "Base Taxes"). For each of the years 2018 to 2021, MK shall make In Lieu

Payments in an amount equal to the Base Taxes plus the following percentages of the increase in the ad valorem taxes that would have been due for the Property in excess of the Base Taxes for the respective years shown:

<u>Year</u>	<u>Percentage</u>
2018	20%
2019	40%
2020	60%
2021	80%

For any periods before or after such 16-year period (2006-2021) that the Property is owned by the Board, MK 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.

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

(a) If MK fails to make any In Lieu Payment when due, and such failure to pay shall continue and not be fully paid within thirty (30) days after written notice of such non-payment has been provided, 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 (1-1/2%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1-1/2%) per month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If MK 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.

6. Disbursements by Trustee. All sums received by the Trustee pursuant to Paragraph 3 shall be disbursed to the general funds of the City and 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 sums received shall be divided into two (2) accounts, one for the use and benefit of the City and the other 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.

7. Contest by MK. MK 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 MK contests any such appraisal or assessment, then it shall present evidence to the Assessor in favor of its position. Likewise, if MK 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, MK shall make such payments under protest. MK 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 MK and the Assessor or the Trustee are unable to resolve a dispute, then MK 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. 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.

9. 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 MK has made all payments required hereunder, whichever shall later occur.

10. Leasehold Taxation. If the leasehold interest of MK should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder. MK agrees to cooperate fully with the Assessor in supplying information for completion of leasehold taxation questionnaires with respect to the Property.

11. Stormwater Fees. MK shall be responsible for all stormwater fees assessed by the City of Chattanooga against the Real Property.

12. 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, c/o Mr. Randall L. Nelson, Suite 400, Pioneer Bank Building, Chattanooga, Tennessee 37402; if to the County, Mr. Rheubin M. Taylor, County Attorney, Hamilton County Government, Room 204, County Courthouse, Chattanooga, Tennessee 37402; if to the Board, c/o Mr. Ross I. Schram III, Spears, Moore, Rebman & Williams, Suite 600 Pioneer Building, Chattanooga, Tennessee 37402; if to MK, Attention: Mr. Morgan Adams, MK, LLC 410 McCallie Avenue Chattanooga, Tennessee 37402, with copy to Alfred E. Smith, Jr., Miller & Martin PLLC, Suite 1000 Volunteer Building, 832 Georgia

Avenue, Chattanooga, Tennessee 37402; 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, or facsimile, be effective when deposited in the mails or if sent upon facsimile transmission, confirmed electronically, respectively, addressed as aforesaid.

13. 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.

14. 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.

15. 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.

16. 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.

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

18. 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.

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

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

BY: William G. Bull
Chairman

MK, LLC

BY: Mary J. Cole
Title: Chief Manager

CITY OF CHATTANOOGA, TENNESSEE

BY: [Signature]
Mayor

Approved: 9/16/05

HAMILTON COUNTY, TENNESSEE

BY: [Signature]
County Mayor

CARL E. LEVI

BY: Carl E. Levi
Hamilton County Trustee

WILLIAM C. BENNETT

BY: William C. Bennett
Hamilton County Assessor of
Property

EXHIBIT "A"
TO PILOT AGREEMENT FOR
MK, LLC

REAL PROPERTY

PARCEL 1 (Second and Third Floors of Building – Improvements Only):

The second and third floors of the building located on those certain tracts of land described below as Tract 1 and Tract 2. Said buildings have a street address of 1419 Market Street.

TRACT 1: IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE: Lot Thirty-five (35) except the south nine (9) inches thereof, and all of Lot Thirty-six (36), Block One (1), J.C. Stanton Subdivision, as per plat of record in Book H, Vol. 2, Page 156, in the Register's Office of Hamilton County, Tennessee. According to said plat said lot and part of lot make one tract fronting forty-nine (49) feet and three (3) inches on the west line of Market Street and extending westwardly, between parallel lines, one hundred forty-nine (149) feet, more or less, to an alley.

TRACT 2: IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE: Lot Thirty-seven (37), Block One (1), Stanton's Subdivision, as per plat of record in Book H, Volume 2, Page 156, of the Register's Office of Hamilton County, Tennessee. According to said plat, said lot fronts Twenty-five (25) feet on the western line of Market Street and extends westwardly, between parallel lines, one hundred forty-nine (149) feet and three (3) inches to an alley.

PARCEL 2 (Parking Lot – Land and Improvements):

TRACT 3: IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE: Lots Thirty-eight (38) and Thirty-nine (39), Block One (1), J.C. Stanton's Subdivision, as shown by plat of record in Book H, Volume 2, Page 156, of the Register's Office of Hamilton County, Tennessee. According to said plat, said lots front Twenty-five (25) feet each on the western line of Market Street and extend westwardly, between parallel lines to the eastern line of an alley.

PERSONAL PROPERTY

All personal property used by MK, LLC in connection with its multi-family housing facility located on the real property described above.