

RESOLUTION NO. 27968

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE GRANTING OF INCENTIVES TO DEVELOP HOUSING IN DOWNTOWN CHATTANOOGA; TO DELEGATE CERTAIN AUTHORITY TO THE HEALTH, EDUCATIONAL HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, AND THE HEALTH, EDUCATIONAL HOUSING FACILITY BOARD (THE "HEB"); TO RENEW A PROGRAM FOR DOWNTOWN HOUSING DEVELOPMENT AS ADOPTED IN RESOLUTION NO. 23253; TO AUTHORIZE THE MAYOR OF THE CITY OF CHATTANOOGA TO ENTER INTO AGREEMENTS FOR PAYMENTS IN LIEU OF AD VALOREM TAXES MEETING THE CRITERIA OF SAID PROGRAM AND TO PROVIDE FOR A TERMINATION OF THIS INCENTIVE PROGRAM IN TEN (10) YEARS.

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WHEREAS, pursuant to Tennessee Code Annotated, Sections 7-53-305(b) and 48-101-312(b), the City of Chattanooga (the "City") is permitted to delegate to The Health, Educational Housing Facility Board of the City of Chattanooga, Tennessee ("HEB") the authority to negotiate and accept payments in lieu of ad valorem taxes ("PILOTS") from lessees of the HEB upon a finding by the City that such payments are deemed to be in furtherance of the respective HEB'S public purposes; and,

WHEREAS, the City wishes to encourage the development of housing in the downtown Chattanooga area; and

WHEREAS, the City has determined that PILOTS from developers of downtown housing would be in furtherance of the HEB's respective public purposes as set forth within Part 3 of

Chapter 101 of Title 48 of the Tennessee Code Annotated; and

WHEREAS, the City wishes to set forth the criteria that must be met by developers of downtown housing facilities in order for them to qualify for PILOT treatment at various levels; and

WHEREAS, the City also would like to encourage the development of single family housing in the downtown Chattanooga area; and

WHEREAS, a Program for Downtown Housing Development adopted by the City of Chattanooga and Hamilton County in 2002 expired by its terms in January of 2012;

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE:

1. That we do hereby find that the development of all types of downtown housing is in the best interest of the City of Chattanooga and Hamilton County, and that PILOTS derived therefrom would be in furtherance of the respective public purposes of each of the HEB; and,

2. That, having made such findings, we do hereby delegate to the HEB the authority to negotiate and accept PILOTS from developers of housing in downtown Chattanooga pursuant to the terms of the attached Program for Downtown Housing Development (the "Program"); and,

3. That the Mayor of the City of Chattanooga is hereby authorized to enter into Agreements for Payments In Lieu Of Ad Valorem Taxes that meet the criteria of the Program; and,

4. That this Resolution shall be effective for only ten (10) years from its passage, at which time it shall terminate and be of no further force or effect, unless extended by action of

this Council.

5. That the City will use its best efforts to develop a mechanism to make similar incentives available to encourage single family housing in the downtown Chattanooga area.

ADOPTED: August 5, 2014

/mem

Program for Downtown Housing Development

In the City of Chattanooga and Hamilton County, Tennessee

This Program for Downtown Housing Development (the "Program") has been approved by the Chattanooga City Council and the Hamilton County Commission in order to provide material incentives for the development of rental housing within downtown Chattanooga. Proposed housing projects will be evaluated based upon the criteria of the Program and may qualify for a freeze on property taxes for a number of years that will vary depending upon the factors described below.

This tax incentive is possible only if title to the housing development is transferred to The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (the "HEB"). The reason that this must be done is that under Tennessee law no reductions or freezes of property taxes may be given to private individuals or entities. If, however, title to property is transferred to a governmental entity, like the HEB, then the governmental entity's interest in property is not subject to ad valorem property taxation. Pursuant to this Program, if the property meets the required criteria, then the tenant of the HEB must agree to make payments in lieu of tax ("PILOTS") in amounts that are less than the tax that would have been due on the property if it were privately owned. The PILOT program will have the effect of completely or partially freezing the property taxes of the project for the prescribed number of years.

The approval process for projects will consist of the filing of an application with the HEB, approval by the HEB and individual approval of each project by resolutions of both the City Council and the Hamilton County Commission.

The mechanics of the Program are described below. Capitalized terms are defined in a definitional section at the end of this document:

1. Basic Requirements. In order to qualify for the incentives of the Program, a housing development must be located within the Downtown, must be occupied by persons of low and/or moderate income, and/or elderly, and/or handicapped persons, and must qualify as a "project" under the state legislation under which the HEB was incorporated. Both existing housing that is to be rehabilitated and new housing construction are eligible for the Program. All qualifying projects must comply with all applicable zoning, land use and building code requirements of the City of Chattanooga.

2. 60% Improvement Requirement. The value of all new construction, building renovation and site improvements must be equal to at least 60% of the value of the property prior to the making of any improvements.

3. Terms of PILOT Freeze Period and PILOT Phase-In Period. The PILOT Freeze Period for each project shall be ten (10) years, plus two (2) additional years if the project involves the rehabilitation of an existing building and two (2) more years if the rehabilitation is a Certified Historic Rehabilitation. In addition to and after the PILOT Freeze Period, qualifying projects shall have the benefit of a PILOT Phase-In Period of four (4) years during which the following percentages shall be applied to phase the property into full taxation:

<u>Year</u>	<u>Percentage</u>
1	20%
2	40%
3	60%
4	80%

4. Other Requirements. The following additional requirements shall apply to the Program:

- (a) Applications must be made on a written form to be promulgated by the RiverCity Company and must be accompanied by a \$500 fee to the RiverCity Company for administration and processing.



- (b) An applicant must apply for a PILOT Freeze before commencement of construction or rehabilitation of a project.
- (c) An applicant must own the subject property or have an enforceable option to purchase the property before applying.
- (d) An applicant whose application for a PILOT Freeze is approved shall have one year from the date of approval to close a PILOT Lease. If this schedule is not met, the applicant must re-submit an application and pay an additional fee of \$250 to the RiverCity Company for reinstatement into the Program.
- (e) If property subject to a PILOT Lease has been unoccupied for a period of two years, the PILOT Lease will be terminated, and the property will be returned to private ownership and full property taxation.
- (f) PILOT Freezes may not be assigned without the prior written approval of the HEB.
- (g) Upon completion of any project qualifying for a PILOT Freeze, the project shall be reviewed by the RiverCity Company to determine if it was completed substantially in accordance with the representations set forth in the application. If appropriate, the term of the PILOT Freeze will be reduced by action of the HEB.
- (h) This program will not apply to extended stay hotels.

5. Council and Commission Approvals: After a PILOT Freeze has been approved by the HEB, individual projects must be approved by resolutions of the City Council and the Hamilton County Commission.

6. Definitions:

"*Downtown*" means that part of the City of Chattanooga more particularly described as follows:

BEGINNING at the intersection of southern right-of-way of East Aquarium Way and the eastern right-of-way of Riverside Drive; thence along the eastern right-of-way of Riverside Drive in a southwesterly direction to its intersection with Mabel Street; thence along the eastern right-of-way of Mabel Street to its intersection with East 3<sup>rd</sup> Street; thence along the southern right-of-way of East 3<sup>rd</sup> Street in an easterly direction to its intersection with Central Avenue; thence along the western right-of-way of Central Avenue to a point where, if extended, Central Avenue would intersect with Interstate Highway 24; thence along the

northern right-of-way of Interstate Highway 24 in a westerly direction to its intersection with State Highway 27; thence along the eastern right-of-way of State Highway 27 in a northerly direction to its intersection with West 4<sup>th</sup> Street; thence along the southern right-of-way of West 4<sup>th</sup> Street in an easterly direction to its intersection with Broad Street; thence along the eastern right-of-way of Broad Street in a northerly direction to its intersection with West Aquarium Way; thence in an easterly direction along the southern right-of-way of West Aquarium Way, crossing Market Street and continuing along the southern right-of-way of East Aquarium Way in an easterly direction to its intersection with Riverside Drive, the point of BEGINNING.

*"PILOT Freeze"* means the benefits conferred under the Program for both the PILOT Freeze Period and the PILOT Phase-In Period.

*"PILOT Freeze Period"* means a period of time during which annual PILOTS are due in an amount equal to the annual tax liability for the property before any new improvements were made, but in no event less than the amount of the Hamilton County School portion of the property taxes that would be due on the property if it had been subject to taxation.

*"PILOT Lease"* means the lease from the HEB to the developer of property subject to this Program.

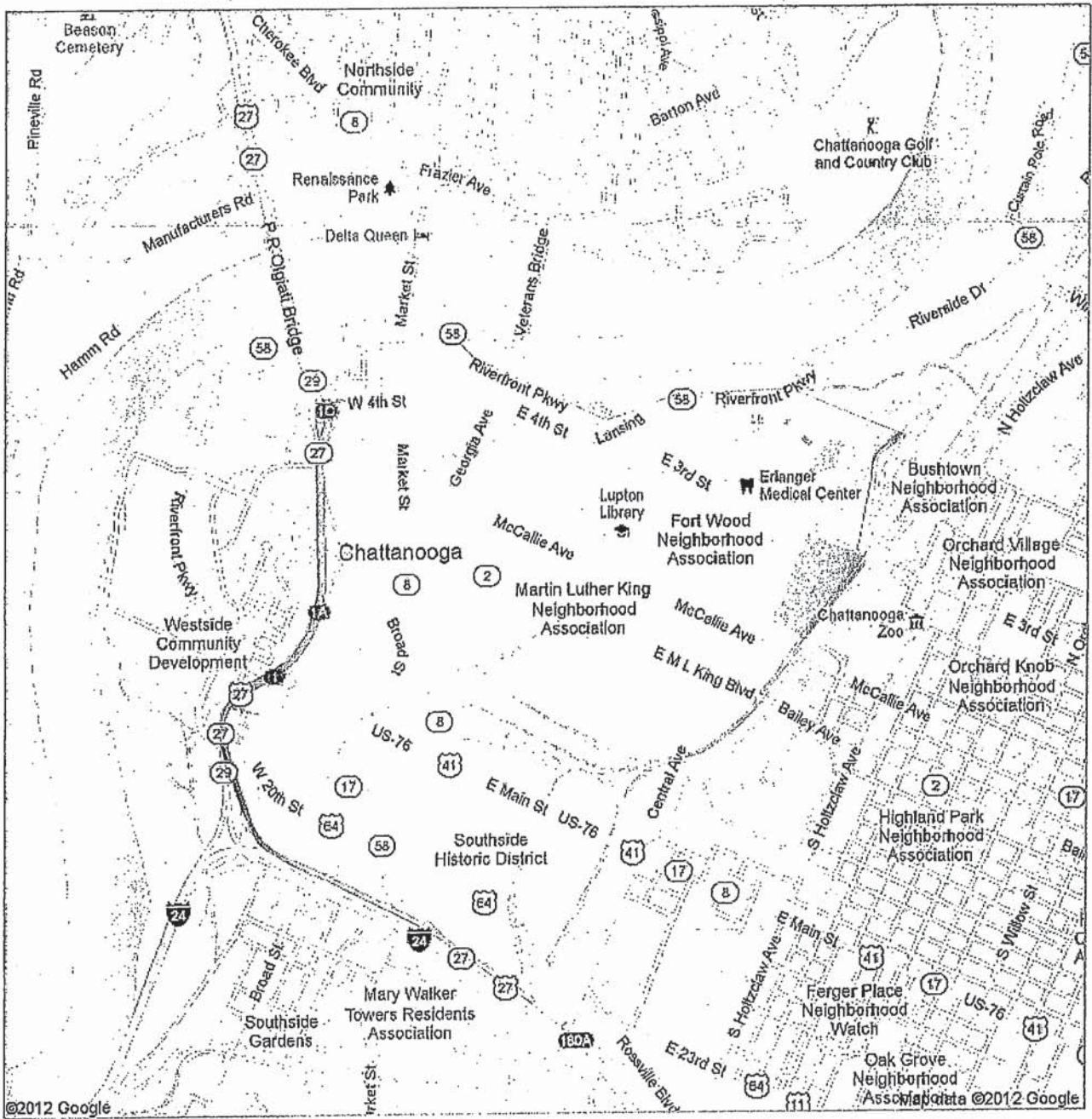
*"PILOT Phase-In Period"* means a period of time during which annual PILOTs are due in an amount equal to the PILOT amount during the last year of the PILOT Freeze Period, plus a specified percentage of the amount by which the annual tax liability on the property would have increased if the property had been subject to taxation, but in no event less than the amount of the Hamilton County School portion of the property taxes that would be due on the property if it had been subject to taxation.



## DOWNTOWN HOUSING TAX FREEZE AREA

BEGINNING at the intersection of southern right-of-way of East Aquarium Way and the eastern right-of-way of Riverside Drive; thence along the eastern right-of-way of Riverside Drive in an easterly direction to the point where it crosses Citico Creek; thence southeastwardly along a line to a point in the northwestern corner of property now or formerly of Georgia Industrial Realty Co. (Tax Map No. 136O-B-002); thence running in a southerly direction along the entire western boundary of Tax Map No. 136O-B-002 and continuing in a southerly direction along a line running to the point where East 3<sup>rd</sup> Street crosses the Southern Railroad right-of-way; thence along the western line of said Southern Railroad right-of-way in a southwesterly direction to the point where the Southern Railroad right-of-way passes under Central Avenue; thence continuing in a southerly direction along the western right-of-way of Central Avenue to a point where, if extended, Central Avenue would intersect with Interstate Highway 24; thence along the northern right-of-way of Interstate Highway 24 in a westerly direction to its intersection with State Highway 27; thence along the eastern right-of-way of State Highway 27 in a northerly direction to its intersection with West 4<sup>th</sup> Street; thence along the southern right-of-way of West 4<sup>th</sup> Street in an easterly direction to its intersection with Broad Street; thence along the eastern right-of-way of Broad Street in a northerly direction to its intersection with West Aquarium Way; thence in an easterly direction along the southern right-of-way of West Aquarium Way, crossing Market Street and continuing along the southern right-of-way of East Aquarium Way in an easterly direction to its intersection with Riverside Drive, the point of BEGINNING.





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

**THIS AGREEMENT** is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the “Board”); \_\_\_\_\_, a Tennessee \_\_\_\_\_ (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”).

**W I T N E S S E T H:**

**WHEREAS**, the Company is contemplating the renovation, equipping and operation of a multi-family housing facility on property located in the downtown area of Chattanooga, Hamilton County, Tennessee (the “Project”), and has requested the Board’s assistance in the financing of the Project; and

**WHEREAS**, the City and County are committed to providing additional affordable housing units; 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, a portion of which 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 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 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. For each of the years 20\_\_ to 20\_\_ (“Tax Abatement Period”) and subject to meeting Company’s obligations set forth herein, the Company shall make In Lieu Payments with respect to the Property in an amount equal to [*the annual ad valorem property tax for such portion of the Property for the year 20\_\_*] (the “Base Taxes”) plus the amount of the Hamilton County School portion of the property taxes that would be due on the Property if it were subject to taxation (the “School Portion”). For any periods before or after such Tax Abatement 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.

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 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 (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 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.

(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 annual defined 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 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, including all amounts relating to the School Portion. The County shall deposit all amounts that are disbursed to it relating to the School Portion into an account for the educational use and benefit of the County schools.

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. 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 the Company has made all payments required hereunder, whichever shall later occur.

10. 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.

11. Stormwater Fees. The Company 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 or the Board, c/o Mr. Wade A. Hinton, 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, \_\_\_\_\_; 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.

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.

19. Annual Report. On or before March 1 of each year this Agreement is in effect, Company shall provide a report of leased affordable housing units to the Mayor of the City and the Mayor of the County.

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

[COMPANY]

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

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

**REAL PROPERTY**

IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, STATE OF TENNESSEE:

**PERSONAL PROPERTY**

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