

The attached Agreement for Payments in Lieu of Taxes is a generic form that will need to be adapted for each payment-in-lieu-of-tax transaction entered into by The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee. This form is intended for a simple transaction that does not involve federal low-income housing tax credits, a ground lease or an expansion of an existing project. This form will need to be adapted with fairly significant changes in those cases. Once a payment-in-lieu-of-tax transaction has been approved by the Health, Educational and Housing Facility Board, the attached generic agreement will be completed by the Board or its counsel for review by the recipient of the tax incentive and its counsel.

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

(_____ PROJECT)

THIS AGREEMENT (this “Agreement”) is made and entered into as of this the ____ day of _____, 202_, by and among **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE**, a public nonprofit corporation (the “Board”); and _____, a (type of entity) (the “Company”).

WITNESSETH:

WHEREAS, the Company is contemplating the improvement of certain real property in Chattanooga, Hamilton County, Tennessee, which real property is more particularly described on Exhibit A attached hereto (the “Property”), by (constructing thereon/rehabilitating) a multifamily residential housing facility described in more detail on Exhibit B (the “Project”); and

WHEREAS, the Board and the Company have entered into a Lease Agreement dated as of the date hereof (the “PILOT Lease”) pursuant to which the Board has agreed to acquire the Property, including the Project to be constructed thereon, and lease such Property to the Company; and

WHEREAS, the Company will lease units in the Project to persons of low and/or moderate income, and therefore the Project is of the type that may be owned by the Board pursuant to Tennessee Code Annotated §§ 48-101-301, *et seq.*, (the “Act”); and

WHEREAS, the Company has requested the Board's assistance with the Project; and

WHEREAS, substantial economic benefits to the City and County economies will be derived from the Project; and

WHEREAS, because the Property is to be owned by the Board, which is a public corporation organized under the provisions of the Act, the 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 with respect to the Property; and

WHEREAS, the Company has agreed to make such payments to the Board in lieu of the property taxes otherwise payable with respect to 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 in accordance with a letter from the Mayor of the City of Chattanooga, Tennessee supporting the Project pursuant to Tenn. Code Ann. § 48-101-312(b)(4)(A); and

WHEREAS, the Company and the Board have agreed that all In Lieu Payments made to the Board by the Company shall be paid, as to In Lieu Payments with respect to City property taxes, to the Treasurer of the City (the “Treasurer”) and, as to In Lieu Payments made to the Board with respect to County property taxes, to the Trustee of the County (the “Trustee”); and

WHEREAS, the Board wishes to designate the Assessor of Property of the County (the “Assessor”) as its agent to appraise the Property if necessary hereunder.

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

1. In Lieu Payments. During the Tax Abatement Period, the Company shall pay directly to the Treasurer and the Trustee In Lieu Payments in the amount set forth in Exhibit C. Such In Lieu Payments shall be paid for the benefit of the Board to the City and the County pursuant to this Agreement, and the Company shall provide evidence of such In Lieu Payments to the Board contemporaneously with such payments. In Lieu Payments shall be made by the Company in lieu of the property taxes which would otherwise be payable with respect to Property if the Property was owned by the Company and was subject to property taxes.

2. Tax Abatement Period. The Tax Abatement Period shall be the fifteen (15) year period commencing on January 1 following the Completion Date, as defined in the PILOT Lease (the “Tax Abatement Period”). Prior to the commencement of the Tax Abatement Period, the Company shall make In Lieu Payments equal to $\$(\text{Year 1 Total In Lieu Payments from LIHTC PILOT Payment Schedule})$ (which amount shall be paid $\$(\text{Year 1 City portion from LIHTC PILOT Payment Schedule})$ to the City and $\$(\text{Year 1 County portion from LIHTC PILOT Payment Schedule})$ to the County). For any tax years after the Tax Abatement Period that the Property is owned by the Board and leased to the Company, the Company shall make In Lieu Payments in an amount equal to one hundred percent (100%) of the amount of taxes that would have been payable with respect to the Property if it were subject to property taxes.

3. Affordable Housing Commitment.

(a) The Company will rent the units in the Project in accordance with and will comply with the terms of: (i) the Land Use Restriction Agreement dated as of _____, 2025 among the Board, the Company and the other parties thereto (the “Bond Restrictive Covenants”) and (ii) the Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits to be entered into between the Company and the Tennessee Housing Development Agency (“THDA”) after the Completion Date, as defined in the PILOT Lease (the “LIHTC Restrictive Covenants”) and together with the Bond Restrictive Covenants, the “Bond and LIHTC Restrictive Covenants”).

(b) The Company will obtain, complete, and maintain on file income certifications from each tenant in the Project in accordance with the Bond and LIHTC Restrictive Covenants. Not later than December 1st of each year during the Tax Abatement Period, the Company shall provide the Board with a written report with respect to the income of each tenant of the Project, compliance under the Bond and LIHTC Restrictive Covenants and such other matters as may be reasonably requested by the Board or the City. Such written report may be in the same form required under the Bond and LIHTC Restrictive Covenants or such other form as may be approved by the Board or the City.

(c) The Company will with reasonable notice permit any duly authorized representative of the Board or the City to inspect the books and records of the Company pertaining to the occupancy of the units and compliance with this Agreement, the PILOT Lease and the Bond and LIHTC Restrictive Covenants.

(d) The Company shall enter into the LIHTC Restrictive Covenants within the time period required under the THDA Low-Income Housing Tax Credit 2025 Qualified Allocation Plan (the “QAP”). Pursuant to the QAP, the LIHTC Restrictive Covenants and as elected in the Company’s tax credit application to THDA, the Company hereby agrees that the term of the LIHTC Restrictive Covenants (the “Extended Use Period”) shall not be terminated via the qualified contract process and waives any and all

opportunity to terminate the Extended Use Period via the qualified contract process. Notwithstanding a termination of the Extended Use Period under LIHTC Restrictive Covenants, the following actions shall be prohibited for a period of three (3) years beginning on the date the Extended Use Period is terminated: (i) the eviction or termination of the tenancy of an existing tenant of any unit in the Project subject to occupancy restrictions, for other than good cause, and (ii) increase the gross rent of any unit in the Project subject to occupancy restrictions, except in accordance with Section 42(g). If, for any reason, the Extended Use Period is less than thirty (30) years, the Company agrees to enter into a separate restrictive covenant agreement with the Board containing the same tenant income restrictions on the Project and otherwise in similar form and substance as the LIHTC Restrictive Covenants for a thirty (30) year term commencing on the same commencement date as the LIHTC Restrictive Covenants.

4. Non-Compliance Payment. If the Property becomes ineligible for federal low-income housing tax credits due to a violation of the LIHTC Restrictive Covenants, the Company shall make In Lieu Payments, beginning as of the date of such violation, in an amount equal to the property taxes that would otherwise be payable with respect to the Property if the Property was owned by the Company.

5. Reserved.

6. Cessation of Business or Foreclosure. In the event the Company ceases (after the Completion Date) the active leasing of units in the Project for sixty (60) consecutive days, other than due to a Force Majeure (as defined in the PILOT Lease) that prevents the leasing of units in the Project or due to the maintenance or repair of the Project, then notwithstanding any provision herein to the contrary, the Company shall make In Lieu Payments, beginning as of the date the Company ceases such active leasing, in an amount equal to the property taxes that would otherwise be payable with respect to the Property if the Property was owned by the Company. Upon the foreclosure of the Company's leasehold interest in the PILOT Lease, any successor to the Company's interest thereunder shall, notwithstanding any provisions herein to the contrary, make In Lieu Payments, beginning as of the date such successor acquires the Company's leasehold interest under the PILOT Lease, in an amount equal to the property taxes that would otherwise be payable with respect to the Property if the Property was owned by such successor.

7. Additional Improvements. The In Lieu Payments payable hereunder shall only apply to the Property identified in the PILOT Lease as the Project. In the event the Company makes improvements to or expands the Project so as to increase the assessment of the tax parcel on which the Project is located, the Company shall make In Lieu Payments to the City and the County with respect to value of such improvements or expansion in an amount equal to the property taxes that would otherwise be payable with respect to such improvements or expansion if such improvements or expansion were owned by the Company except to the extent such improvements or expansion are permitted to be part of the Project in the sole discretion of the Board.

8. Payments in Lieu of Taxes Applicable Only to Property. Any reduction in property taxes otherwise payable as provided in this Agreement shall not apply with respect to any other tax assessed against the Company, its income, or its other real property or any personal property.

9. Assumption of Ownership of Property. In the event the Company acquires ownership of the Property or any portion thereof, the Company shall begin paying all applicable property taxes directly to the City and County as to such Property as assessed, but shall not make, from the date of such acquisition, any In Lieu Payments with respect to such property other than those payments that were unpaid at the time of such acquisition. Upon any such acquisition or upon the termination or expiration of the PILOT Lease for any reason during a year, the Company shall pay a pro-rated amount of the In Lieu Payments (with the application of pro-rated reductions in the manner provided above) required by this Agreement for the period

during such year that the applicable Property was owned by the Board. The Company shall also make any payments required by the PILOT Lease and under Section 18 of this Agreement.

10. Credit for Taxes Paid. Nothing contained in this Agreement is intended or shall be construed to require the payment by the Company of any In Lieu Payments that would be greater in amount than would be payable as property taxes if the Property were owned by the Company. It is accordingly understood and agreed that the amount payable by the Company in any year under the provisions of this Agreement shall be reduced by the amount of any property taxes lawfully levied upon the Property or any part thereof, or upon the Company's leasehold estate therein, and actually paid by the Company to the City and the County, and to the extent that any such tax payments paid by the Company for any year shall exceed the In Lieu Payments for such year, the amount payable by the Company in any subsequent year under the provisions of this Agreement shall be reduced by such excess amount.

11. Timing of Payments. The In Lieu Payments with respect to each year, to the extent payable for the benefit of the City, shall be due on or before the last day on which property taxes are due and payable without penalty to the City with respect to such year, and to the extent payable for the benefit of the County, shall be due on or before the last day on which property taxes are payable without penalty to the County with respect to such year. The obligation to make any such payments shall survive the termination of the PILOT Lease.

12. Late Charges and Collection Costs. If not paid as required above, all In Lieu Payments shall be subject to late charges and related costs as follows:

(a) If the Company fails to make an 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. Additional late charges of one and one-half percent (1-1/2%) of the amount shall accumulate and become immediately due and payable upon the expiration of each subsequent thirty (30) day period when 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 addition to all remedies provided hereunder, against the Company 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.

13. Designation of Assessor; Appraisal and Assessment of Property. The Board hereby designates the Assessor as its agent to appraise and assess the Property. The Board will request the Assessor to 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 Board will request the Assessor to give the Trustee, the 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. If the Assessor is unwilling or unable to undertake the assessment required by this Section, the Board shall retain a third party experienced with appraisals to undertake the appraisal and assessment required by this Section consistent with the appraisal and assessment methodology that would be applied by the Assessor and provide such appraisal and assessment to the Company.

14. Computation and Billing of Payments In Lieu of Taxes. Each year, the Board shall send the Company, with copies to the Assessor, Trustee and the Treasurer, bills for appropriate amounts of In Lieu Payments (the "PILOT Bills"). After receipt of the PILOT Bills, the Company shall pay to the Treasurer and the Trustee the amounts indicated on the PILOT Bills which amounts shall be determined in accordance with the provisions set forth herein.

15. Application of In Lieu Payments. All In Lieu Payments received by the Treasurer for the benefit of the City shall be disbursed to the appropriate funds of the City, as directed by the City Finance Director, and in accordance with the normal requirements of law governing the settlement and paying over of taxes to municipalities. All In Lieu Payments received by the Trustee for the benefit of the County (other than the School Portion which shall be paid to the School Fund) shall be disbursed to the appropriate fund of the County as directed by the Finance Director of the County and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties.

16. Contest by the Company. The Company shall have the right to contest the appraisal or assessment of the Property and the computation of the amount of each In Lieu Payment. If the Company contests any such appraisal or assessment, then it shall present evidence to the Board 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 Board shall negotiate in good faith for a period not to exceed sixty (60) days to resolve any disputes as to appraisal, assessment or computation of the In Lieu Payment. If the Company and the Board 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.

17. Lien on the Property. Any In Lieu Payments payable under this Agreement shall become a lien on the Property if not paid when due, and such lien shall be enforceable against the Property in the same manner as a property tax lien would be enforced against the Property.

18. Term; Termination Payment. This Agreement shall become effective on the date hereof and shall continue for so long as (i) the PILOT Lease remains in effect or (ii) the Company has made all payments required hereunder, whichever shall later occur. If the PILOT Lease terminates prior to the expiration of the Tax Abatement Period due to a default by the Company hereunder or under the PILOT Lease or the purchase of the Property by the Company pursuant to the PILOT Lease, the Company shall make an additional In Lieu Payment contemporarily with the termination of the PILOT Lease equal to \$(Early Termination Payment from LIHTC PILOT Payment Schedule).

19. Notices, etc. All notices permitted or required to be made hereunder shall be in writing and delivered by personal delivery, reputable overnight courier or certified mail. Notices shall be deemed given (a) when actually given and received if delivered by personal delivery; (b) one (1) Business Day after delivery to a reputable overnight courier if delivered by an overnight courier; or (c) five (5) Business Days after deposit with the United States Postal Service if delivered by certified mail. All such notices shall be addressed to the appropriate party as follows:

Board:

The Health, Educational and Housing
Facility Board of the City of Chattanooga,
Tennessee
100 E. 11th Street, Suite 200
Chattanooga, Tennessee 37402
Attention: City Attorney

Company: _____

Attention: _____

Copies of all notices shall also be sent to:

Assessor: Hamilton County Assessor of Property
Hamilton County Courthouse
Chattanooga, Tennessee 37402

Treasurer: City of Chattanooga Treasurer
101 East 11th Street, Suite 100
Chattanooga, Tennessee 37402

Trustee: Hamilton County Trustee
Hamilton County Courthouse
Chattanooga, Tennessee 37402

Any such person may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communication shall be sent.

20. 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.

21. 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.

22. No Liability of Board, City and County Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, official, director or officer of the Board, the City or the County, whether past, present or future, either directly or through the Board, the City or the County. 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, official, director or officer is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

23. Assignment. The Company may only assign any of its rights or obligations under this Agreement, or any part hereof, to a permitted assignee of the PILOT Lease.

24. 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.

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

26. Prohibition on Boycott of Israel. The Company certifies that it is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of Israel as defined by Tenn. Code Ann. § 12-4-119.

27. Amendments. This Agreement may be amended only in writing, signed by each of the parties hereto.

28. Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

29. State Reports. The Company shall comply with any State reporting requirements applicable to this Agreement and the payment of In Lieu Payments hereunder.

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

[Signature Pages Follow]

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: _____
Chairman

ATTEST:

Secretary

[COMPANY NAME]

a _____

By: _____

Name: _____

Title: _____

EXHIBIT A

(REAL PROPERTY DESCRIPTION)

EXHIBIT B

General Description of Project including address, size and number of units

EXHIBIT C

In Lieu Payments During Tax Abatement Period

<u>Tax Abatement Period</u>	<u>Total In Lieu Payments</u>	<u>City Portion</u>	<u>County Portion</u>
Year 1			
Year 2			
Year 3			
Year 4			
Year 5			
Year 6			
Year 7			
Year 8			
Year 9			
Year 10			
Year 11			
Year 12			
Year 13			
Year 14			
Year 15			