

RESOLUTION NO. 30577

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE BATTERY HEIGHTS RENOVATION PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD, AND TO AUTHORIZE THE MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.

WHEREAS, pursuant to Tennessee Code Annotated, Section 48-101-312(b), the City of Chattanooga (the “City”) is permitted to delegate to the Health, Educational, and Housing Facility Board of the City of Chattanooga (the “Board”) the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Board for “multi-family housing facilities” or “multi-family residential units” which meet the definition of a project under Tennessee Code Annotated, Section 48-101-301 upon a finding by the Board that such payments are deemed to be in furtherance of the Board’s public purpose which determination shall be conclusive; and

WHEREAS, APP Battery Partners, L.L.P. or a related or affiliated entity (the “Company”) is contemplating the improvement of the Battery Heights Apartments located at 3401 Campbell Street in Chattanooga, Hamilton County, Tennessee including the renovation, equipping and furnishing of a multifamily, low income housing tax credit apartment project with approximately 142 units (collectively the “Project”) and, because of the substantial economic benefits to the City and Hamilton County resulting from the Project, has asked the Board and the City Council to approve payments in lieu of ad valorem taxes; and

WHEREAS, the Council has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Board’s public purposes as set forth within Tennessee Code Annotated, Section 48-101-312(b);

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that the City Council does hereby find that the “multi-family housing facilities” project is in the best interest of the City, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Board’s public purposes; and

BE IT FURTHER RESOLVED that, having made such a finding in this instance, the City Council does hereby delegate to the Board the authority to negotiate and accept payments in lieu of taxes from the Company, it being further noted that this delegation is for this purpose and this project only; and

FURTHER RESOLVED that the Mayor is hereby authorized to enter into an Agreement for Payments in Lieu of Ad Valorem Taxes in substantially the form attached hereto, with such changes thereto as he shall approve; and

BE IT FURTHER RESOLVED that this Resolution shall take effect from and after its passage, the public welfare requiring it.

ADOPTED: December 15, 2020

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

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2021, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the “Board”); APP BATTERY PARTNERS, L.L.L.P., a Tennessee limited liability limited partnership (the “Company”); the CITY OF CHATTANOOGA, TENNESSEE (the “City”); and HAMILTON COUNTY, TENNESSEE (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 MARTY HAYNES 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 improvement of the properties located at 3401 Campbell Street in Chattanooga, Hamilton County, Tennessee, including the renovation, equipping and furnishing of a multifamily, low income housing tax credit apartment project with approximately 142 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 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 and the City Treasurer, as applicable, 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. According to Chapter 0600-10 of the Rules of the Tennessee State Board of Equalization, following renovation of the Property, such appraisal shall consist of two components: (i) the restricted use component (the “Restricted Income Value”) which will be based on the Assessor’s valuation of the Project’s operating income, and (ii) the LIHTC subsidy component (the “LIHTC Subsidy Value”) which will be based on the Assessor’s valuation of the LIHTC subsidy provided to the Project by the Tennessee Housing Development Agency (collectively the Restricted Income Value and the LIHTC Subsidy Value are hereinafter referred to as the “Renovated Project Value”). 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. 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 Section 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) Payments for Unrenovated Project. For each of the years [2022 through 2035] (the “Tax Abatement Period”), the Company shall make In Lieu 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 2020 (the “Base Year”) on the value of the Project (the “Unrenovated Project Value”). The parties agree that the payments based upon the Unrenovated Project Value will equal Twenty-eight Thousand Nine Hundred Five and 15/100 Dollars (\$28,905.15) per year to the City and Thirty-five Thousand One Hundred Two and 55/100 Dollars (\$35,102.55) per year to the County (inclusive of the District Road Fund payment to the County). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the Unrenovated Project Value exclusive of the improvements made in connection with the renovation of the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Payments for Renovated Project.

(i) School Tax on Renovations. After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated 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”) based upon the increase in the Renovated Project Value over the Unrenovated Project Value (the “Renovation Value”). The parties acknowledge and agree that the School Portion currently equates to 24.80% 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. The parties further acknowledge that the percentage of the School's Portion will vary as City and County tax rates change.

(ii) General Fund Tax on Renovations. After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, the Company shall also make In Lieu Payments in the amounts set forth below under paragraph (iii) based upon the City and County general fund property taxes that would be due on the Renovation Value (defined above) of the Property if it were subject to taxation.

(iii) In Lieu Payments and Phase In Period. After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, additional In Lieu Payments on the Renovation Value will be as follows:

Tax Year	City General Fund Portion ⁽¹⁾ Renovation Value	County General Fund Portion ⁽¹⁾ Renovation Value	County School Fund Portion ⁽¹⁾ Renovation Value
2022 – 2031	0%	0%	100%
2032	20%	20%	100%
2033	40%	40%	100%
2034	60%	60%	100%
2035	80%	80%	100%
2036	100%	100%	100%

(1) – The above percentages refer to the percent of the amount of taxes that would have been payable on the value if it were subject to property taxes.

As noted above, during such years 2022 to 2035, the Company shall continue to pay an In Lieu Payment based upon the Base Value, shall continue to pay the School Portion attributable to the Hamilton County Schools, and shall pay a phased in additional payment based upon the City and County general fund portion attributable to the Renovation Value between 2032 and 2035.

For any periods before or after the 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; Affordability Requirement. 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 (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, 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) The Company covenants as follows:

(i) The Project will be completed within twenty-four (24) months following the date of this Agreement, and the Project will be constructed in substantial compliance with the project description set forth in the PILOT Application that the Company submitted to the City as determined by the Land Development Office of the City and in consultation with the County.

(ii) After completion of the Project and during the Tax Abatement Period, 100% of the dwelling units in the Project will be set aside for occupancy by households whose income is not greater than 80% of the area median income as annually defined in the most recent guidelines published by the Department of Housing and Urban Development, and the overall average household income for all dwelling units in the Project will not exceed 60% of the area median income according to the same guidelines (the "Affordability Requirement").

(iii) After completion of the Project and during the Tax Abatement Period, the Project shall be maintained in habitable condition and in compliance with all applicable City and County ordinances and codes.

(d)

(i) If the Company should fail to meet the Affordability Requirement under Section 5(c)(ii) above with respect to the Project and such failure continues for a period of more than one hundred eighty (180) days following receipt by the Company of written notice from the City or the County specifying such failure in reasonable detail (an "Affordability Event of Default"), the City and the County may then require the Company to pay an additional In Lieu Payment based upon the difference between (i) the In Lieu Payments on the Property owed pursuant to Section 4 during the period of the continuance of such Affordability Event of Default and (ii) the full taxes that would have been payable on the Property if it were subject to property taxes multiplied by a fraction (expressed as a percentage), the denominator of which is the number of dwelling units at the Project subject to the Affordability Requirement and the numerator of which is the greater of (x) the number of dwelling units that are not occupied by or available for occupancy by households whose income is not greater than 80% of the area median income as annually defined in the most recent guidelines published by the Department of Housing and Urban Development; or (y) the number of dwelling units that cause the overall average household income for all dwelling units in the Project to exceed 60% of the area median income according to the same guidelines. The County and the City shall look solely to the Company for any repayment obligations.

(ii) In no event shall the Company be required to pay more in In Lieu Payments than the Company would have paid in property taxes, if the Property were subject to property taxes.

6. Disbursements by the Treasurer and Trustee. All sums received by the Treasurer pursuant to Section 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 Section 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 Section 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 § 48-101-302.

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 the City, the County and the Board, on or before February 15 of each calendar year during this Agreement following the date the Project is placed in service, (i) a copy of the Owner's Annual Certification of Compliance that the Company has provided to the Tennessee Housing Development Agency for the prior calendar year, and (ii) a certification of the Company as to the Company's compliance with the covenants set forth in Section 5(c). An independent audit of these certifications 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. 11th 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. Berkeley Burbank, APP Battery Partners, L.L.P., 35 Union Ave., Suite 200, Memphis, TN 38103; 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, when sent by U.S. certified mail, return receipt requested, shall be effective three days after sending, or when sent by overnight courier or personal delivery, shall be effective upon delivery, or when sent by facsimile transmission, confirmed electronically, shall be effective when sent, in each case 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.

(a) Except in the event of the conveyance of the Property as a result of a foreclosure or deed in lieu of foreclosure or except as otherwise 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.

(b) Notwithstanding the provisions of subsection (a), above, and notwithstanding any other provision in this Agreement or the Lease to the contrary, the Company may make a collateral assignment of all or any portion of its interests in this Agreement, the Lease and the Project for the benefit of one or more banks or other lenders that, from time to time, provide financing to the Company. Nothing in this Agreement or the Lease shall in any way restrict any sale or transfer of the leasehold interest and other interests of the Company in the Project pursuant to a judicial or non-judicial foreclosure sale as a result of the exercise of any one or more lender's rights under the applicable loan documents. The City, the County and the Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the City, County or Board, in consummating any financing for the Company that involves a pledge or assignment of the Company's interests in this Agreement, the Lease or the Project. Without limitation of the foregoing, the Mayor of the City, the Mayor of the County, and the Chairman of the Board, or any of their respective designees, are authorized, upon the Company's request, enter into or consent to such documents as are necessary to consummate such financing including, without limitation, the "HUD Rider to Security Instrument" attached hereto as Exhibit "B" as well as additional consents to assignment, deeds of trust, estoppel certificates, subordination and

non-disturbance agreements, affidavits and certificates, provided that any such documents are expressly non-recourse to the City, County and Board beyond the Board's interest in the Project

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, 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, as such, 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, 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:

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

By: _____
Secretary

By: _____
Chairman

APP BATTERY PARTNERS, L.L.L.P.

By: _____
Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

HAMILTON COUNTY, TENNESSEE

By: _____
County Mayor

WILLIAM F. HULLANDER

By: _____
Hamilton County Trustee

MARTY HAYNES

By: _____
Hamilton County Assessor of Property

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

REAL PROPERTY

PERSONAL PROPERTY

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

EXHIBIT "B"
RIDER TO SECURITY INSTRUMENT
FEE JOINDER