

PAYMENT IN LIEU OF TAX AGREEMENT

This Payment in Lieu of Tax Agreement (the “Agreement”) is made and entered into this ___ day of _____, 202__ (the “Effective Date”), by and between The Health and Educational Facilities Board of the Metropolitan Government of Nashville and Davidson County (the “Board”) and _____ (the “Developer”)(collectively, the “Parties”).

RECITALS:

WHEREAS, the Board was created pursuant to the provisions of Tennessee Code Annotated § 48-101-301 *et seq.*, as amended (the “Act”), to advance the public purposes provided for in the Act which includes, among other things, to provide for additional safe and sanitary multifamily housing facilities to be used by persons of low and/or moderate incomes; and,

WHEREAS, the Act authorizes The Metropolitan Government of Nashville and Davidson County (the “Metropolitan Government”) to delegate to the Board the authority to negotiate and enter into payment in lieu of ad valorem tax agreements with qualifying entities when such is in the furtherance of the Board’s public purposes as provided for in the Act; and,

WHEREAS, on May 5, 2022, the Metropolitan Council of the Metropolitan Government of Nashville and Davidson County (the “Metropolitan Council”) adopted Ordinance No. BL2022-1170 (the “Ordinance”) that established the Mixed-Income PILOT Program (the “Program”), which delegated to the Board the authority to negotiate and enter into payment in lieu of tax agreements with developers of qualifying multifamily housing properties who agree to provide a certain percentage of income-restricted housing units at affordable rates in accordance with the Program’s requirements; and,

WHEREAS, the Developer has informed the Board that it has constructed, intends to construct, or has substantially rehabilitated a multifamily housing property located at or near _____ in Nashville, Davidson County, Tennessee, identified by Tax Map and Parcel Number _____, which contains a minimum _____ of a total _____ units that will be restricted to individuals or families at _____ % of Area Median Income for rentals at affordable rates in accordance with the requirements of the Program (such property being the “Project”); and,

WHEREAS, the Board has determined that the Project qualifies for the Program and has deemed it necessary and desirable to acquire the Project and enter into this Agreement for the purposes of the Program and such is in furtherance of its public purposes pursuant to the Act; and,

WHEREAS, contemporaneously upon conveyance of the Project to the Board, the Board and the Developer shall enter into a PILOT Lease Agreement (the “PILOT Lease”) which shall set forth certain rights and responsibilities between the parties, which includes, without limitation, the Developer’s obligation to operate the Project for the benefit of providing a certain

percentage of affordable housing units for rentals by low and/or moderate-income individuals; and,

WHEREAS, upon the Board acquiring legal title to the Project, and as a result of the Developer entering into the PILOT Lease and participating in and abiding by the rules and requirements of the Program, the Project will receive an abatement of all real property ad valorem taxes for the Project in exchange for the Developer making In Lieu of Tax Payments as provided for herein.

NOW, THEREFORE, for and in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Definitions. In addition to the terms and words elsewhere defined in this Agreement or the PILOT Lease, the following terms herein shall have the following meanings:
[.....to be added later]

2. PILOT Term. The term (“Term”) of this Agreement shall commence on the Effective Date, and unless sooner terminated or canceled in accordance with the terms of this Agreement, shall expire immediately upon the expiration of the Abatement Period.

3. In Lieu of Tax Payments.

(a) As an essential and material inducement to the Board entering into this Agreement, the Developer has represented to the Board that during the Abatement Period, the Project shall solely be operated as a multifamily rental housing property and include a maximum of ___ residential rental units, of which the Developer covenants and warrants that a minimum of _____ residential rental units shall be reserved for occupancy by Qualified Tenants at the affordable rates as established from time to time by the Housing Division on behalf of the Board.

(b) The In Lieu of Tax Payments provided for herein shall apply to and be paid by the Developer in lieu of all ad valorem real property taxes or similar type taxes or assessments, whether presently in effect or hereafter imposed on the Project, imposed by or on behalf of the Metropolitan Government.

(c) The Developer shall maintain all documentation related to the costs to construct and/or rehab the Project. By no later than _____ of the Initial PILOT Year, the Developer will provide to the Housing Division the amount of the aggregate value of the eligible building construction costs, rehabilitation costs, and/or acquisition costs for the Project (as each such cost is applicable) and supporting documentation for such costs. Developer—at its sole expense—shall also cause the engagement of a qualified, independent appraiser, who is acceptable to the Board, to conduct and produce to the Board a fee simple appraisal of the Project for the purposes of determining the market value of the Project for the Initial PILOT YEAR in accordance with applicable Tennessee law and principles regarding *ad valorem* property tax assessment. Upon approval of the amounts by the Housing Division, which shall not be unreasonably denied, such aggregate value shall be the “Assessed Value” of the Project for purposes of determining the Standard Tax Amount, which is calculated as follows:

(Assessed Value) x (40 Percent) x (Applicable Tax Rate) = Standard Tax Amount.

(d) Beginning with the Initial PILOT Year, and continuing for each successive PILOT Year thereafter until the expiration of the Abatement Period, the Developer shall annually pay to the Metropolitan Government the In Lieu Tax Payment which shall be equal to the amounts determined by the following schedule:

Level 1A + 1B UZO

Applicable Year:	Percentage of Applicable Standard Tax Amount:
Initial PILOT Year through PILOT Year 10	20% with 4% escalation annually
PILOT Year 11	%
PILOT Year 12	%
PILOT Year 13	%
PILOT Year 14	%
PILOT Year 15	%

Level 1A + 1B Non UZO

Applicable Year:	Percentage of Applicable Standard Tax Amount:
Initial PILOT Year through PILOT Year 10	30% with 3.5% escalation annually
PILOT Year 11	%
PILOT Year 12	
PILOT Year 13	
PILOT Year 14	
PILOT Year 15	

(i) Notwithstanding the foregoing, in no event shall the amount of the annual In Lieu of Tax Payment be less than the Base Tax Amount.

- (ii) Beginning in the PILOT Year immediately following the Initial PILOT Year, and for each successive PILOT Year thereafter until the expiration of the Abatement Period, the amount of the In Lieu of Tax Payment shall increase each PILOT Year at an annual rate of ___ percent, such accrual being cumulative.
- (iii) Prior to the beginning of the Initial PILOT Year, and/or after the termination or expiration of the Abatement Period, Developer shall be required to pay 100 percent of the Applicable Ad Valorem Tax. In the case that the calculation of either the In Lieu of Tax Payment or Applicable Ad Valorem Tax is not based on an entire calendar year, such respective amounts shall be prorated on a daily basis to reflect the period in which this Agreement is in effect.

(e) Pursuant to the Act, the Metropolitan Trustee shall annually bill and collect the In Lieu of Tax Payment on behalf of the Metropolitan Government. On or before October 1 of each respective PILOT Year, the Metropolitan Trustee will compute the amount of the In Lieu of Tax Payment and send a bill to the Developer; provided, however, that failure of the Metropolitan Trustee to send or the Developer to receive such bill shall not relieve the Developer of its obligation to make each payment due hereunder. Each In Lieu of Tax Payment shall be due and payable, and become delinquent, at the same time as *ad valorem* real property taxes as provided for by law, and, further, shall accrue interest, fees, and penalties in the same manner and at the same rate as delinquent *ad valorem* real property taxes as provided for by law.

(f) If applicable law should require the leasehold interest of Developer in the Project to be subject to ad valorem taxation, then any such amounts assessed as taxes thereon shall be credited against the applicable annual In Lieu of Tax Payment due hereunder.

(g) During the Abatement Period, Developer shall promptly notify the Board if there (1) is a change in use to all or a portion of the Project from that of a residential multifamily housing facilities or (2) are any replacements, expansions, enhancements or improvements to the Project that are likely to result in or affect a change the value of the Project. Should such change be material, the Parties shall agree to amend this Agreement to reflect the accordant change in Assessed Value.

(h) At least ___ days prior to the expiration of the Abatement Period, the Developer may apply to the Board to request an extension of the Abatement Period by an additional fifteen (15) year period, which the Board may grant or deny in its sole discretion. To be eligible for such extension, the Developer must: (i) have remained in good standing with this Agreement and the PILOT Lease throughout their respective terms, (ii) have complied with all applicable local, state and federal laws related to the operation of the Project; (iii) continue to meet the eligibility requirements to participate in the Program during the proposed extension; and (iv) comply with any additional requirements that the Board may require for the Program.

4. Program Fees.

(a) *Initiation Fee.* In the Initial PILOT Year, the Developer shall pay to the Board an initiation fee equal to 75 basis points of the In Lieu of Tax Payment owed for the Initial PILOT Year (the “Initiation Fee”).

(b) *Monitoring and Reporting Fees.* In the Initial PILOT Year, and each successive PILOT Year thereafter, the Developer shall pay to the Board an annual monitoring and reporting fee, to be established each year by the Board in an amount which shall not exceed three percent (3%) of the In Lieu of Tax Payment for the respective PILOT Year (the “Annual Fee”) in which such Annual Fee becomes due.

(c) *Legal Fees.* In addition to the attorney’s fees provided for in paragraph ___ of this Agreement, at the request of the Board, the Developer also shall pay all legal expenses incurred by the Board that are reasonably related to the Developer’s participation in the Program, which includes, without limitation, such expenses related to: (i) the negotiation, preparation and or review of documents involving Developer’s participation in the Program; (ii) legal services obtained in furtherance of assisting the Board to carry out its responsibilities, duties, obligations, and goals concerning Program implementation; or (iii) any other matters reasonably requiring the Board to determine, in its sole discretion, the need to engage the services of legal counsel.

(d) Each fee due pursuant to this paragraph 4 shall constitute an additional In Lieu of Tax Payment (the “Additional Tax Payment”), and in the case of the Initiation Fee and the Annual Fee, shall be due and payable at the same time and accrue interest, fees, and penalties in the same manner as provided for the In Lieu of Tax Payment. To the extent the Board has directly engaged legal counsel to provide legal services as contemplated in subsection (c), Developer shall be required to remit payment to the Board at such time and on such terms imposed by the legal counsel on the Board pursuant to the applicable contract of engagement. The Additional Tax Payment, and any other sums due pursuant to this Agreement other than the In Lieu of Tax Payment, shall be billed and collected by the Housing Division on behalf of the Board.

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

6. Program Compliance. Developer shall maintain all appropriate documentation to establish compliance with the requirements of the Program, which compliance requirements may be established by such rules, regulations, policies, and procedures that the Board has or may hereinafter adopt in furtherance of the goals, purposes, and objectives of the Program. Upon request by the Board (or its authorized representative), and in such form as requested by the Board, the Developer shall promptly provide all such documentation necessary to certify its compliance and shall further respond to any and all such inquiries for information by the Board (or its authorized representative). Developer shall further undertake all necessary acts to ensure its collection and maintenance of the requisite information and documentation necessary for establishing compliance, which includes, without limitation, requiring third parties for whom it is in privity of contract with to both (i) provide to the Developer and (ii) give informed consent

for the release to the Board, such requisite information and documentation necessary for certifying compliance.

7. Housing Division as Administrator. Developer acknowledges that pursuant to the Ordinance, the Housing Division is responsible for the implementation, oversight and administration of the Program on behalf of the Board, and, accordingly, possesses all requisite authority to act on behalf on the Board with regard to implementation, oversight, and administration of the Program.

8. Annual Reports. Pursuant to Tenn. Code Ann. § 48-101-312(d), during the Term, the Developer shall (a) submit to the State Board of Equalization the required annual report on or before October 1 of each calendar year; and (b) file such report with the Metropolitan Assessor for Nashville and Davidson County on or before October 15 of each calendar year. The Developer shall transmit a copy of such report to the Board by October 15 of each calendar year.

9. Fair Housing. Developer shall comply with all applicable equal opportunity laws (which includes, without limitation, the Fair Housing Act, Tennessee Human Rights Act, and the Tennessee Disability Act) in the operation of the Project to not discriminate against any person based on race, color, national origin, religion, sex, familial status, age, or disability or any other protected class provided for under applicable law.

10. Event of Default.

(a) Failure of the Developer to (i) perform any obligation or comply with any requirement of this Agreement or the PILOT Lease, (ii) remain in compliance with the eligibility requirements to qualify to participate in the Program; or (iii) termination of the PILOT Lease pursuant to its terms other than for expiration, shall constitute an Event of Default (each act or omission, an “Event of Default”). For the avoidance of doubt, the failure of the Developer to take any such action or execute any such documents as the Housing Division or Board deems necessary or desirable to facilitate the purposes of the Program consistent with this Agreement, PILOT Lease, Ordinance, or the Act shall constitute an Event of Default.

(b) The Board, or its representative, shall give written notice to the Developer of each Event of Default, and if such default is not cured within thirty (30) days of the date of such notice (or in the case that such Event of Default cannot be cured with due diligence within the thirty (30) day period, and the Board elects to extend the cure period for such time it deems adequate and necessary to cure such default), the Board shall be entitled to terminate this Agreement by giving an additional thirty (30) days written notice of termination and its effective date.

(c) In the event that the Board shall be required to engage legal counsel for the enforcement of any of the terms of this Agreement or the PILOT Lease, whether or not such engagement shall require institution of suit or other legal proceedings to secure compliance on the part of the Developer, and the Board prevails, the Developer shall be responsible for and shall promptly pay to the Board the reasonable value of such attorney’s fees and other expenses incurred by the Board as result of such engagement of legal counsel or costs incurred in any legal proceeding.

11. Effect of Termination or Expiration. Upon the termination of this Agreement or the PILOT Lease, the Abatement Period shall also forthwith terminate. At expiration or termination, the Board shall convey, and the Developer shall be required to acquire, all title and interest held by the Board in the Project, to which all costs related to such transfer shall be borne by the Developer. The Developer further covenants and warrants that Qualified Tenants with extant leases at the time of termination or expiration, who are not otherwise in default in the terms of their respective leases, shall not have their leases terminated as a result of such termination or expiration of this Agreement. With respect to the preceding sentence, and notwithstanding any other provision herein to the contrary, the Parties acknowledge and agree that Qualified Tenants are intended third-party beneficiaries of such obligation and the each of them shall have the right to enforce or assert as a defense such obligation against the Developer in any action or proceeding regarding their tenancy, and, further, that such third-party beneficiary right shall survive the termination and expiration of this Agreement.

12. Representations.

(a) Board hereby represents that: (i) the Board is a public, nonprofit corporation and validly existing under the laws of the State of Tennessee and has all requisite corporate, governmental and other power and authority to enter into this Agreement and in other agreements related hereto; (ii) this Agreement transactions contemplated hereby have been duly and validly authorized by all necessary corporate, governmental or other action on its part; and (iii) this Agreement constitutes the valid and binding obligation of Board enforceable against the Board in accordance with the terms hereof.

(b) Developer hereby represents that: (i) the Developer is a [], duly formed, existing and in good standing under the laws of the State of [] and has all requisite power and authority to enter into this Agreement and the transaction contemplated hereby have been duly and validly authorized by all necessary action on its part;; (ii) has, or has obtained, the requisite authority to transact business in the State of Tennessee; (iii) this Agreement constitutes the valid and binding obligation of the Developer enforceable against the Developer in accordance with the terms hereof; (iv) there are no proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer in any court or before any governmental authority, arbitration board, or tribunal that are reasonably likely to materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) or Developer or the ability of Developer to perform its obligations under this Agreement; and (v) Developer is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

13. No Liability of the Board. Pursuant to Tenn. Code Ann. § 48-101-312, the Board shall be immune from suit, and any legal and financial obligations whatsoever pertaining to the Project, and, further, Developer covenants and warrants that it shall remain liable for suits, and any legal and financial obligations whatsoever, pertaining to the Project. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, members, director or officer, as such past, present, or future, of Board, 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 is hereby expressly waived and released by Developer as a condition of and consideration for the execution of this Agreement.

14. Indemnification. Developer agrees to defend, indemnify and hold the Board and the Metropolitan Government, and either of their governing bodies, officers, employees, agents or contractors harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with this Agreement, PILOT Lease, the Project, or the Program.

15. Further Acts and Assurances. The Parties hereby agree to take such actions, adopt such resolutions, and enter into such further agreements as may be necessary, or reasonably required by either Party, to affect the intent of this Agreement.

16. Miscellaneous.

(a) *Amendments*. This Agreement may only be amended in writing, signed by the authorized representatives of the Parties hereto.

(b) *Counterparts*. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall together constitute on and the same agreement.

(c) *No Partnership or Agency*. Nothing in this Agreement is intended to, or shall be deemed to, establish to create a relationship between the parties of agent, servant, employee, partnership, joint venture or association.

(d) *Assignment Consent Required*. This Agreement may not be assigned by any of the parties without the prior written consent of the other parties hereto. In the event of such assignment, no party shall be discharged or released from any of its obligations or duties contained herein.

NOTICE OF ASSIGNMENT MUST BE SENT TO:

ATTN: Director of Law, Department of Law
Metropolitan Courthouse Suite 108
P.O. Box 196300
Nashville, TN 37201

Chair of the Health and Education Facilities Board
c/o Adams and Reese LLP
424 Church Street, Suite 2700
Nashville, TN 37219

(e) *No Third-Party Beneficiary*. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns and is not for the benefit of, nor may any provision be enforced by any other person, except as otherwise set forth in paragraph ____.

(f) *Tennessee Public Records Act*. The Developer acknowledge that each the Board and the Metropolitan Government is a “public agency” for purposes of the Tennessee Public Records Act (the “Act”), Tenn. Code Ann. § 10-7-501, *et seq.*, and that for the purposes of the

Act, any information or documents received by the Board or the Metropolitan Government related to this Agreement or the Program will be considered a public record and may be subject to public disclosure unless an applicable exception exists under applicable law.

(g) *Notices.* Any notice or communication required hereunder shall be delivered, mailed by first class mail postage prepaid, or delivery by nationally-recognized courier services to the Parties as follows:

To the Developer:

[Address]

To the Board:

The Health and Education Facilities Board
c/o Adams and Reese LLP
424 Church Street, Suite 2700
Nashville, TN 37219

with a copy to:

[Housing Division]

with an additional copy to:

ATTN: Director of Law, Department of Law
Metropolitan Courthouse Suite 108
P.O. Box 196300
Nashville, TN 37201

The address of any party may be changed by notice to each other party given in the same manner as provided in this subparagraph.

(h) *Binding Effect.* This Agreement shall be binding upon and insure to the benefit of the each of the Parties and signatories hereto and to their respective successors and assigns.

(i) *Severability.* Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

(j) *Governing Law; Venue.* This Agreement is governed by and construed in accordance with the laws of the State of Tennessee. Any legal action brought under this

Agreement must be instituted in a court of competent jurisdiction located in Davidson County, Tennessee.

(k) *No Waiver; Remedies.* No failure on the part of either party, and no delay any exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under his 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.

(l) *Survival.* Termination or expiration of this Agreement shall not affect any rights or obligations arising out of any event or occurrence prior to termination or expiration, or which by their terms or nature such rights or obligations must be extended beyond the date of termination or expiration to be effective.

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

THE HEALTH AND EDUCATIONAL FACILITIES BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

XXX, LP

By: _____

Title: _____

FILED WITH THE METROPOLITAN CLERK

Metropolitan Clerk

Date

DRAFT

EXHIBIT A

Property Description

DRAFT