



Hamilton County Board of Commissioners

RESOLUTION

No. 515-28

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE HERITAGE-MACLELLAN APARTMENTS, LLC PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, AND TO AUTHORIZE THE COUNTY 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) Hamilton County (the "County") is permitted to delegate to The Health, Educational, and Housing Facility Board of the City of Chattanooga (the "Corporation") the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Corporation upon a finding by the County that such payments are deemed to be in furtherance of the Corporation's public purposes; and,

WHEREAS, Heritage-Maclellan Apartments, LLC (the "Company") is contemplating the renovation of the historic Maclellan Building, in downtown Chattanooga, to provide for (in addition to ground-level commercial space) apartments with mixed sizes of efficiencies, and one (1) bedroom and two (2) bedroom 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, the County Commission, and the City Council to approve payments in lieu of ad valorem taxes; and,

WHEREAS, the County has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Corporation's public purposes as set forth within Chapter 101 of Title 48 of the Tennessee Code Annotated;

NOW, THEREFORE, BE IT RESOLVED BY THIS COUNTY LEGISLATIVE BODY IN SESSION ASSEMBLED:

That we do hereby find that the Heritage-Maclellan Apartments, LLC project (exclusive of the

ground-level commercial space) referenced above is in the best interest of the County, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Corporation's public purposes; and

That having made such a finding in this instance, we do hereby delegate to the Corporation the authority to negotiate and accept payments in lieu of ad valorem taxes from the Company, it being further noted that this delegation is for the purpose and this project only; and,

That the County Mayor is hereby authorized to enter into an Agreement for Payments In Lieu Of Ad Valorem Taxes in the form attached hereto, with such changes thereto as he shall approve; and,

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

Approved:



Rejected:



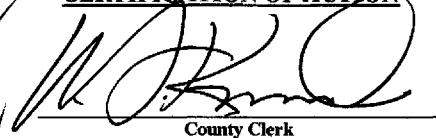
Approved:

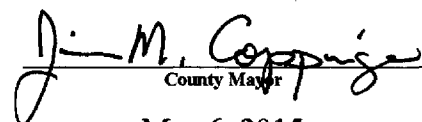


Vetoed:



CERTIFICATION OF ACTION


County Clerk


County Mayor

May 6, 2015

Date



MARK W. SMITH

Direct Dial 423-785-8357

Direct Fax 423-321-1527

Mark.Smith@millermartin.com

December 7, 2016



Rheubin M. Taylor, Esq.
County Attorney
Hamilton County, Tennessee
204 Hamilton County Courthouse
Chattanooga, Tennessee 37402

RE: The Health, Educational and Housing Facility Board of the City of
Chattanooga and Heritage – Maclellan Apartments, LLC

Dear Rheubin:

I am forwarding for your files one (1) copy of the final transcript for the Heritage – Maclellan Apartments project.

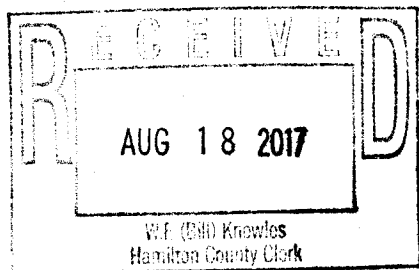
If you would like an electronic copy of the transcript, please let me or my assistant Carol Bain (carol.bain@millermartin.com) know and we will arrange to upload the document to you.

We have enjoyed working with you on this transaction.

Sincerely yours,

Mark W. Smith

MWS:cjb
Enclosure



W. F. (Bill) Knowles, County Clerk
FILED on 8/28/17
Misc. Record Book File # 2400
By Chedin, Dep. Clk.

Volunteer Building, Suite 1200
832 Georgia Avenue | Chattanooga, TN | 37402-2289
Office 423.756.6600 Fax 423.785.8480
millermartin.com

ATLANTA
CHARLOTTE
CHATTANOOGA
NASHVILLE

TRANSCRIPT INDEX

*The Health, Educational and Housing Facility Board
of the City of Chattanooga, Tennessee
and
Heritage – Maclellan Apartments, LLC*

1. HEB Resolution 2015-14 Approving PILOT and Lease Agreement
2. City of Chattanooga Resolution No. 28233 Approving PILOT
3. Hamilton County Resolution No. 515-28 Approving PILOT
4. HEB Resolution No. 2016-04 Approving Deed of Trust
5. PILOT Agreement
6. Quit Claim Deed
7. Tennessee Fee Deed of Trust with Security Agreement and Assignment of Rents and Leases (includes fixture filing under Uniform Commercial Code)
8. PILOT Lease Agreement
9. Comptroller Filing

A RESOLUTION

AUTHORIZING THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, TO TAKE TITLE TO CERTAIN REAL AND PERSONAL PROPERTY, TO EXECUTE A LEASE AGREEMENT TO LEASE SUCH PROPERTY TO HERITAGE-MACLELLAN APARTMENTS, LLC (THE "COMPANY") FOR OPERATION OF A MULTI-FAMILY HOUSING FACILITY, AND TO ENTER INTO AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES WITH THE COMPANY.

WHEREAS, Heritage-Maclellan Apartments, LLC (the "Company"), is considering the operation of a multi-family housing facility on property located in the downtown area of Chattanooga, Hamilton County (the "Project"); and

WHEREAS, the Company has requested that The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (the "Board"), agree to take title to the real and personal property comprising the Project (the "Leased Property") and lease the Leased Property to the Company; and

WHEREAS, the Company has provided information in a written application (the "Application") filed with the Board concerning the tenants whom the Company expects to occupy the Project; and

WHEREAS, the Company has requested that the Board agree to enter into an agreement with the Company whereby the Company will make payments in lieu of ad valorem taxes; and

WHEREAS, the City Council of the City of Chattanooga and the Hamilton County Board of Commissioners have delegated to the Board the right to receive payments in lieu of ad valorem property taxes in accordance with Tenn. Code Ann. Section 48-101-312; and

WHEREAS, the ownership of the Leased Property and the leasing thereof to the Company are within the powers of the Board as described in Tenn. Code Ann. Section 48-101-

308, and the provision for payments in lieu of ad valorem property taxes on the Leased Property is within the powers of the Board as described in Tenn. Code Ann. Section 48-101-312; and

WHEREAS, the form of an Agreement for Payments In Lieu of Ad Valorem Taxes and the form of a Lease Agreement have been presented to the Board for approval in connection with this Project;

NOW, THEREFORE, BE IT RESOLVED by The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, as follows:

Section 1. The Board hereby finds that the Project constitutes "Housing" as that term is defined in Tenn. Code Ann. Section 48-101-301, in that the Project will be a multi-family housing facility to be occupied by persons of low and/or moderate income, and /or elderly, and/or handicapped persons, based upon the information supplied by the Company in the Application.

Section 2. The Board agrees to accept title to the Leased Property and to lease the Leased Property to the Company. The form, terms and provisions of the Lease Agreement attached hereto as Exhibit "A" (the "Lease Agreement") are hereby approved, and all of the terms, provisions and conditions of the Lease Agreement are hereby incorporated herein. The Chairman or Vice Chairman of the Board is hereby authorized, empowered and directed to execute, acknowledge and deliver the Lease Agreement in the name and on behalf of the Board, and the Secretary or Assistant Secretary of the Board is hereby authorized and directed to attest the same. The Lease Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officials of the Board executing the same.

Section 3. The Board agrees to enter into the Agreement for Payments in Lieu of Ad Valorem Taxes, attached hereto as Exhibit "B" (the "PILOT Agreement"), with the Company and the form, terms and provisions are hereby approved, and all of the terms, provisions and conditions of the PILOT Agreement are hereby incorporated herein. The Chairman or Vice Chairman of the Board is hereby authorized, empowered and directed to execute, acknowledge and deliver the PILOT Agreement in the name and on behalf of the Board, and the Secretary or Assistant Secretary of the Board is hereby authorized and directed to attest the same. The PILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officials of the Board executing the same.

Section 4. The Chairman, or Vice Chairman, and Secretary, or Assistant Secretary, of the Board shall be, and they are hereby further authorized and directed for and on behalf of the Board, to take any and all such action as may be required by the Board to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement and the PILOT Agreement authorized pursuant to this resolution and to execute all papers, documents, certificates and other instruments that may be required for the carrying out of the authority conferred by this resolution or to evidence said authority.

Section 5. Prior to or in connection with the execution of the Lease Agreement, the Chairman, or the Chairman's designee, may, upon the Company's request, enter into or consent to such documents as are necessary to consummate the financing and/or development of the Project in the same manner and to the same extent provided under Sections 9.03 and 9.04 of the Lease Agreement; provided that any such transaction or approval must be expressly non-recourse to the Board beyond its interest in the Project and related property and must further

satisfy the requirements of Section 8.01 of the Lease Agreement with respect to the immunities provided to members of the Board.

Approved this 2nd day of July, 2015.

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

By: 

Title: Vice Chair

RESOLUTION NO. 28233

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE HERITAGE-MACLELLAN APARTMENTS, LLC 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 upon a finding by the City that such payments are deemed to be in furtherance of the Board's public purposes; and

WHEREAS, Heritage-Maclellan Apartments, LLC (the "Company") is contemplating the renovation of the historic Maclellan Building, in downtown Chattanooga, to provide for (in addition to ground-level commercial and/or retail space) apartments of mixed sizes of studios, one (1) bedroom, and two (2) bedroom 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 Chapter 101 of Title 48 of the Tennessee Code Annotated;

NOW, THEREFORE, BE IT RESOLVED BY THIS COUNCIL:

That we do hereby find that the 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

That, having made such a finding in this instance, we do hereby delegate to the Board the authority to negotiate and accept payments in lieu of ad valorem taxes from the Company; provided that the ground-level commercial and/or retail space shall not be eligible for a freeze of in lieu of tax payments, and it being further noted that this delegation is for this purpose and this project only; and

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 TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

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

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2015, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the "Board"); HERITAGE-MACLELLAN APARTMENTS, LLC, a Delaware Limited Liability Company (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 a renovation of the historic Maclellan Building including the construction of apartments with mixed sizes of 40 studio, 42 one (1) bedroom, and 8 two (2) bedroom 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 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 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 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 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 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.

(a) Property Exclusive of Improvements. For each of the years 2015 and thereafter, the Company shall make 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 2015 (the "Base Year") on the value of the associated Property (land, buildings, etc.). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the value of the property in the Base Year exclusive of the improvements made in connection with the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Improvements. After construction of the Project is completed and the Assessor of Property has reassessed the then improved 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"), which the parties acknowledge and agree currently equates to [27.1%] 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. Additional In Lieu Payments on the improvements will be as follows:

Year	City General Fund ⁽¹⁾	County General Fund ⁽¹⁾	County School Fund ⁽¹⁾
2016 – 2029	0%	0%	100%
2030	20%	20%	100%
2031	40%	40%	100%
2032	60%	60%	100%
2033	80%	80%	100%
2034	100%	100%	100%

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

As noted above, during such years 2016 to 2034, the Company shall continue to pay the School Portion attributable to the Hamilton County Schools. For any periods before or after such 18-year 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.

(c) For each of the years 2016 to 2034, the Company shall make In Lieu Payments with respect to the commercial and retail space on the first floor of the Property 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 that portion of 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 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) 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 annually defined in 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 the Treasurer and Trustee. All sums received by the Treasurer pursuant to Paragraph 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 Paragraph 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 Paragraph 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 §7-53-305.

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, on or before January 31 of each calendar year during this Agreement, an annual report to the Board, the Mayor of the City, and the Mayor of the County, summarizing its investment in the Property and a certified rent roll. An independent audit of the annual report 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. William M. Yandell, III, Heritage-MacLellan Apartments, LLC, 5350 Poplar Avenue, Suite 730, Memphis, Tennessee 38119; 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.

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. Except as 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.

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'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.

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

HERITAGE-MACLELLAN APARTMENTS, LLC

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

[INSERT LEGAL DESCRIPTION]

PERSONAL PROPERTY

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



Hamilton County Board of Commissioners RESOLUTION

No. 515-28

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE HERITAGE-MACLELLAN APARTMENTS, LLC PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, AND TO AUTHORIZE THE COUNTY 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) Hamilton County (the "County") is permitted to delegate to The Health, Educational, and Housing Facility Board of the City of Chattanooga (the "Corporation") the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Corporation upon a finding by the County that such payments are deemed to be in furtherance of the Corporation's public purposes; and,

WHEREAS, Heritage-Maclellan Apartments, LLC (the "Company") is contemplating the renovation of the historic Maclellan Building, in downtown Chattanooga, to provide for (in addition to ground-level commercial space) apartments with mixed sizes of efficiencies, and one (1) bedroom and two (2) bedroom 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, the County Commission, and the City Council to approve payments in lieu of ad valorem taxes; and,

WHEREAS, the County has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Corporation's public purposes as set forth within Chapter 101 of Title 48 of the Tennessee Code Annotated;

NOW, THEREFORE, BE IT RESOLVED BY THIS COUNTY LEGISLATIVE BODY IN SESSION ASSEMBLED:

That we do hereby find that the Heritage-Maclellan Apartments, LLC project (exclusive of the

ground-level commercial space) referenced above is in the best interest of the County, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Corporation's public purposes; and

That having made such a finding in this instance, we do hereby delegate to the Corporation the authority to negotiate and accept payments in lieu of ad valorem taxes from the Company, it being further noted that this delegation is for the purpose and this project only; and,

That the County Mayor is hereby authorized to enter into an Agreement for Payments In Lieu Of Ad Valorem Taxes in the form attached hereto, with such changes thereto as he shall approve; and,

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

CERTIFICATION OF ACTION

Approved:

☐

Rejected:

☐

County Clerk

Approved:

☐

Vetoed:

☐

County Mayor

May 6, 2015

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

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2015, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the "Board"); HERITAGE-MACLELLAN APARTMENTS, LLC, a Delaware Limited Liability Company (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").

WITNESSETH:

WHEREAS, the Company is contemplating a renovation of the historic Maclellan Building including the construction of apartments with mixed sizes of 40 studio, 42 one (1) bedroom, and 8 two (2) bedroom 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 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 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 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 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 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.

(a) Property Exclusive of Improvements. For each of the years 2015 and thereafter, the Company shall make 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 2015 (the "Base Year") on the value of the associated Property (land, buildings, etc.). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the value of the property in the Base Year exclusive of the improvements made in connection with the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Improvements. After construction of the Project is completed and the Assessor of Property has reassessed the then improved 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"), which the parties acknowledge and agree currently equates to [27.1%] 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. Additional In Lieu Payments on the improvements will be as follows:

Year	City General Fund ⁽¹⁾	County General Fund ⁽¹⁾	County School Fund ⁽¹⁾
2016 – 2029	0%	0%	100%
2030	20%	20%	100%
2031	40%	40%	100%
2032	60%	60%	100%
2033	80%	80%	100%
2034	100%	100%	100%

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

As noted above, during such years 2016 to 2034, the Company shall continue to pay the School Portion attributable to the Hamilton County Schools. For any periods before or after such 18-year 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.

(c) For each of the years 2016 to 2034, the Company shall make In Lieu Payments with respect to the commercial and retail space on the first floor of the Property 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 that portion of 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 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) 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 annually defined in 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 the Treasurer and Trustee. All sums received by the Treasurer pursuant to Paragraph 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 Paragraph 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 Paragraph 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 §7-53-305.

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, on or before January 31 of each calendar year during this Agreement, an annual report to the Board, the Mayor of the City, and the Mayor of the County, summarizing its investment in the Property and a certified rent roll. An independent audit of the annual report 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. William M. Yandell, III, Heritage-Maclellan Apartments, LLC, 5350 Poplar Avenue, Suite 730, Memphis, Tennessee 38119; 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.

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. Except as 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.

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'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.

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:

By: _____
Secretary

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

By: _____
Chairman

HERITAGE-MACLELLAN APARTMENTS, LLC

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

[INSERT LEGAL DESCRIPTION]

PERSONAL PROPERTY

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

A RESOLUTION

AUTHORIZING THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (THE "BOARD") TO EXECUTE A DEED OF TRUST AND SECURITY AGREEMENT WITH AN ASSIGNMENT OF RENTS AND TO TAKE CERTAIN ACTION WITH RESPECT TO THE HERITAGE-MACLELLAN APARTMENTS, LLC (THE "COMPANY") PROJECT.

WHEREAS, by Resolution dated July 2, 2015 (the "PILOT Resolution"), the Board approved taking title to a project of the Company and approved entering into a lease and payment in lieu of tax agreement with the Company (together, the "PILOT Documents") relating to the development and operation of a multi-family housing facility on property located in the downtown area of Chattanooga, Hamilton County (the "Project"); and

WHEREAS, in connection with the financing of the Project, the Company has requested that the Board approve and enter into a fee deed of trust with a security agreement and an assignment of leases and rents (the "Deed of Trust");

NOW, THEREFORE, BE IT RESOLVED by The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, as follows:

Section 1. The Board hereby approves the Deed of Trust in substantially the form attached hereto as **Exhibit A**, subject to modifications as permitted in this Section. The Chairman or Vice Chairman of the Board is hereby authorized, empowered and directed to execute, acknowledge and deliver the Deed of Trust in the name and on behalf of the Board, and the Secretary or Assistant Secretary of the Board is hereby authorized and directed to attest the same. The Deed of Trust is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officials of the Board executing the same.

Section 2. The Board hereby ratifies and reaffirms its prior approval of the PILOT Documents pursuant to the PILOT Resolution and authorizes the Secretary or Assistant Secretary to certify to the Company and its lenders and related parties that such approval remains in full force and effect.

Section 3. The Chairman, or Vice Chairman, and Secretary, or Assistant Secretary, of the Board shall be, and they are hereby further authorized and directed for and on behalf of the Board, to take any and all such action as may be required by the Board to carry out, give effect to and consummate the transactions contemplated by this resolution and to execute all papers, documents, certificates and other instruments that may be required for the carrying out of the authority conferred by this resolution or to evidence said authority.

Section 4. Nothing in this resolution shall alter or amend the authorizations or approvals set forth in the PILOT Resolution, which remains in full force and effect.

Approved this 24th day of February, 2016.

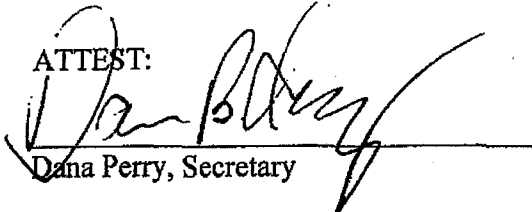
THE HEALTH, EDUCATIONAL AND
HOUSING FACILITY BOARD OF THE CITY OF
CHATTANOOGA, TENNESSEE

By: _____

Hicks Armor

Title: Chair

ATTEST:


Dana Perry, Secretary

THIS INSTRUMENT PREPARED BY
AND RETURN TO:
Richard E.M. Nichol, Jr.
Evans Petree PC
1000 Ridgeway Loop Road, Suite 200
Memphis, TN 38120

MAXIMUM PRINCIPAL INDEBTEDNESS FOR
TENNESSEE RECORDING TAX PURPOSES
IS \$-0-.

**TENNESSEE FEE DEED OF TRUST
WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES
(INCLUDES FIXTURE FILING UNDER UNIFORM COMMERCIAL CODE)**

THIS INDENTURE is made and entered into as of the _____ day of _____, 2016, by and among **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE**, a public not-for-profit corporation of the State of Tennessee, whose address is 100 East 11th Street, Suite 200, Chattanooga, Tennessee 37402, party of the first part (hereinafter called "Grantor"), Greg Smithers, as TRUSTEE, having an address of 4894 Poplar Avenue, Memphis, Tennessee 38117, a resident of Shelby County, Tennessee, party of the second part (hereinafter called "Trustee"), and **IBERIABANK**, a Louisiana state banking corporation, whose address is 4894 Poplar Avenue, Memphis, Tennessee 38117, party of the third part (hereinafter called "Bank"). This instrument covers property which is or may become so affixed to real property as to become fixtures and also constitutes a fixture filing under § 47-9-502 of Tennessee Code Annotated. NOTICE PURSUANT TO § 47-28-104 OF TENNESSEE CODE ANNOTATED: This Deed of Trust secures future advances which are "obligatory advances" as defined in the aforesaid statute. This Deed of Trust is for "commercial purposes" as defined in said statute.

FOR AND IN CONSIDERATION OF FIVE DOLLARS (\$5.00) cash in hand paid by the Trustee to the Grantor, and the debt and trusts hereinafter mentioned, the said Grantor has bargained and sold, and does hereby bargain, sell, convey and confirm unto the said Trustee the real property (said real property together with the Improvements (hereinafter defined) being herein called the "Mortgaged Property") situated and being in the City of Chattanooga, Hamilton County, Tennessee, more particularly described in **Exhibit "A,"** attached hereto and made a part hereof as fully and particularly as if set out herein verbatim, together with:

(a) All the improvements now on or which may be hereafter placed on said real property during the existence of this lien; and

(b) All the income, rents, issues and profits arising therefrom and for the use thereof; and

(c) All materials, equipment, furnishings or other property whatsoever installed or to be installed and used in and about the building or buildings on said real property, including, but not being limited to, all heating, plumbing, lighting, water-heating, cooking, refrigerating, incinerating, ventilating and air conditioning equipment, storm doors and windows, shades, rugs, carpeting, awnings, blinds, drapes, and linoleums, and property of like nature, all of which property and things are hereby declared to be permanent accessions to the freehold and part of the real property conveyed herein as security for the Obligations (hereinafter defined) (the property described in the foregoing paragraph (a) and this paragraph (c) being sometimes herein called the "Improvements"); and

(d) All estate, right, title and interest of Grantor in and to all leases and subleases covering the Mortgaged Property or any portion thereof now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, guarantees and deposits of similar nature;

TO HAVE AND TO HOLD, the aforescribed Mortgaged Property, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining unto the said Trustee, their successors in trust and assigns, in fee simple forever.

BUT THIS IS A TRUST DEED, and is made for the following uses and purposes, and none other; that is to say: **HERITAGE-MACLELLAN APARTMENTS, LLC**, a Delaware limited liability company doing business in Tennessee ("Borrower"), is justly indebted to Bank or the holder of the note hereinafter mentioned (said Bank or such holder being hereinafter sometimes called the "Beneficiary"), in the principal sum of **Ten Million Five Hundred Thousand Dollars (\$10,500,000.00)** evidenced by:

That certain promissory note ("Note") of even date herewith, in the principal amount of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00) bearing interest from date until maturity at the rate specified in said Note, said interest being payable monthly as provided in said Note, the principal of said Note being due and payable on or before _____, said Note being payable to the order of Bank, at the offices of Bank, at the address indicated on the billing statement provided by Bank, or at such other place as the Beneficiary may designate in writing, being executed by the Borrower, and being given for value received (said Note being incorporated herein by reference as fully and particularly as if set out herein verbatim).

AS FURTHER SECURITY, Grantor hereby pledges, assigns and grants to Beneficiary a continuing security interest in the property (the "Personal Property") described in **Exhibit "B,"** attached hereto and incorporated herein by reference [the property described in subparagraphs (a) and (b) of **Exhibit "B"** being sometimes herein called the "Tangible Personal Property"].

Grantor desires to secure and make certain the payment of the indebtedness evidenced and to be evidenced by the Note, and any and all renewals, modifications and extensions thereof, in whole or in part and also the payment and performance of the other Obligations, as hereinafter defined.

NOW, THEREFORE, so long as any part of the Obligations shall remain unpaid or unperformed, Grantor covenants, agrees, represents and warrants as follows:

ARTICLE I OBLIGATIONS DEFINED

The following obligations of the Grantor and Borrower are hereinafter collectively called the "Obligations":

1.1 Note. Payment of the indebtedness (and interest thereon) evidenced and to be evidenced by the Note, and of any and all renewals, modifications, substitutions, replacements, restatements and extensions thereof, in whole or in part, including all future advances;

1.2 Loan Agreement. Payment and performance of all fees, expenses, indebtednesses, liabilities and obligations of Borrower under that certain Amended and Restated Loan Agreement (the "Loan Agreement") of even date herewith among Borrower, the Beneficiary and certain guarantors therein mentioned, as amended or modified from time to time (any references to said Loan Agreement only being applicable if there is in fact a Loan Agreement);

1.3 Deed of Trust. Payment of all sums advanced by Beneficiary to or for the benefit of Grantor contemplated hereby and performance of all obligations and covenants herein contained, including, without limitation, any amounts advanced to protect the trust estate and security interests herein granted and all attorneys' fees, court costs, and expenses of whatever kind incident thereto or to the

collection of the indebtednesses and obligations hereby secured and/or enforcement of the liens and security interests herein granted;

1.4 Leasehold Deed of Trust. Payment and performance of all indebtednesses, liabilities and obligations of the Borrower under and pursuant to that certain Leasehold Deed of Trust with Security Agreement and Assignment of Leases and Rents (the "Leasehold Deed of Trust"), of even date herewith, executed by the Borrower in favor of the Beneficiary, for the purpose of securing the payment of the same Obligations as are secured by this instrument.

1.5 Other Indebtednesses Under the Note. Payment of all other indebtednesses arising under or in connection with this Deed of Trust, the Leasehold Deed of Trust, the Note, the Loan Agreement or any other instrument or document now or at any time evidencing, securing or guaranteeing the same (collectively the "Loan Documents").

1.6 Lease. Payment and performance of all indebtednesses, liabilities and obligations of Borrower under and pursuant to that certain Lease Agreement entered into by and between Grantor and Borrower bearing date of _____, and recorded in the Register's Office of Hamilton County, Tennessee under Instrument No. _____, (the "Board Lease"), and any and all renewals, modifications, restatements or replacements thereof, in whole or in part.

ARTICLE II COVENANTS AND AGREEMENTS AS TO MORTGAGED PROPERTY

Grantor does hereby covenant, warrant and represent to and agree with Beneficiary as follows:

2.1 Eminent Domain. Grantor hereby transfers, sets over, and assigns to Beneficiary all judgments, awards of damages and settlements hereafter made as a result or in lieu of any taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets. Beneficiary is hereby authorized, but not required, in behalf and in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such judgments or awards. Beneficiary may apply all such sums or any part thereof so received, after the payment of all of its expenses, including costs and reasonable attorney's fees, on the Obligations secured hereby, whether due or not, in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released to the Grantor or other party lawfully entitled thereto.

2.2 Repair, Waste, Alterations, etc. Grantor shall not remove or demolish or alter the design or structural character of any Improvements now or hereafter erected upon the Mortgaged Property without the prior written consent of Beneficiary unless such removal, demolition or alteration is contemplated and permitted by the Loan Documents.

2.3 Advances by Beneficiary to Protect Collateral. If the Borrower shall default in paying taxes, making payments in lieu of taxes, maintaining insurance or making repairs, the Beneficiary may, at its discretion, advance and pay such sums as may be proper to satisfy taxes, maintain insurance and make repairs, and protect and preserve the Mortgaged Property and Personal Property, and such amounts so paid shall be treated as part of the expense of administering this trust, shall be repaid by Borrower on demand with interest at the Default Rate (hereinafter defined), and shall be secured by the lien hereof. However, the making of any such payment by Beneficiary shall not be construed as a waiver of any default of Borrower.

2.4 Mechanics' Liens. Beneficiary has not consented and will not consent to any contract or to any work or to the furnishing of any materials which might be deemed to create a lien or liens superior to the lien of this instrument, either under § 66-11-108 of Tennessee Code Annotated, or otherwise.

2.5 Compliance with Laws. Grantor, the Mortgaged Property, the Personal Property, and the use thereof by Grantor shall comply with all laws, rules, ordinances, regulations, covenants, conditions, restrictions, orders and decrees of any governmental authority or court applicable to Grantor or the Mortgaged Property and its use.

2.6 Further Assurances. Grantor, upon the request of Beneficiary, shall execute, acknowledge, deliver, and record such further instruments and do such further acts as may be necessary, desirable or proper to carry out the purposes of this instrument and the other Loan Documents and to subject to the liens and security interests created thereby any property intended by the terms thereof to be covered thereby, including specifically but without limitation any renewals, additions, substitutions, replacements, improvements, or appurtenances to the Mortgaged Property or the Personal Property.

2.7 Inspection of Premises. Until the Obligations shall have been fully paid and satisfied, Beneficiary and its agents shall have the right at all reasonable times to inspect the Mortgaged Property, the Personal Property and the other security for the Obligations, and all applicable books and financial records relating thereto.

2.8 Due on Sale or Encumbrance. Grantor covenants and agrees with Beneficiary that the entire Obligations secured by this Deed of Trust shall, at the absolute option of Beneficiary, be and become immediately due and payable should the Grantor, without the prior written consent of Beneficiary (which consent may be given or withheld in the sole and absolute discretion of Beneficiary), sell, assign, transfer, convey, lease with option to purchase, enter into a contract for sale, grant an option to purchase, or further encumber any or all of Grantor's interest in the Mortgaged Property or the Personal Property, or any portion thereof, or permit the same to be sold, assigned, transferred, conveyed, contracted for or further encumbered.

ARTICLE III ASSIGNMENT OF RENTS AND LEASES

3.1 Assignment of Rents and Leases. All of the rents, royalties, bonuses, issues, profits, revenue, income, deposits, escrow accounts and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any existing or future lease or agreement pertaining thereto and liquidated damages following default under such leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Mortgaged Property, together with any and all rights that Grantor may have against any tenant under such leases or any subtenants or occupants of any part of the Mortgaged Property and any award made hereafter to Grantor in any court proceeding involving any of the tenants or in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court, and all payments by tenants in lieu of rent other than any payments in lieu of taxes (all hereinafter collectively called the "Rents"), are hereby absolutely and unconditionally assigned to Beneficiary, to be applied by Beneficiary in payment of the Obligations. Grantor hereby further assigns to Beneficiary all existing and future leases, including subleases, any and all extensions, renewals, modifications, and replacements thereof, and all guaranties of tenants' performance thereunder, upon any part of the Mortgaged Property (the "Leases"). It is understood and agreed by the parties that this assignment is intended to be and is an absolute assignment from Grantor to Beneficiary, and not merely the passing of a security interest; provided, however, that prior to an Event of Default, Grantor shall have a license, without joinder of Beneficiary, to enforce the Leases and to collect the Rents as they come due and to retain, use and enjoy

the same. Grantor shall, upon request of Beneficiary, execute confirmatory assignments of any specific leases affecting any part of the Mortgaged Property.

3.2 Prior Approval for Actions Affecting Leases. Grantor shall not, without the prior written consent of Beneficiary:

- (a) receive or collect Rents not yet due under the terms of any of the Leases;
- (b) waive or release any obligation of any tenant under the Leases or any party liable under the Leases;
- (c) cancel, terminate or modify any of the Leases, cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of the Leases, except upon default by the tenant thereunder; or
- (d) change, alter or modify any of the Leases.

3.3 No Obligation upon Beneficiary. Beneficiary's acceptance of the assignment of Leases and Rents provided for herein shall not obligate Beneficiary to appear in or defend any proceeding relating to any of the Leases or to the Mortgaged Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Grantor by any tenant. Beneficiary shall not be liable for any injury or damage to person or property in or about the Mortgaged Property.

3.4 Merger. There shall be no merger of the leasehold estates created by the Leases (including the Board Lease) with the fee estate of the Mortgaged Property without the prior written consent of Beneficiary.

3.5 Right to Rely. Grantor hereby authorizes Beneficiary to give notice in writing of this assignment at any time to any tenant under any of the Leases, and from and after the occurrence of an Event of Default hereunder, to direct any such tenant to make payment of rentals and other amounts due directly to Beneficiary. Grantor hereby authorizes and directs the tenants under the Leases to pay Rents to Beneficiary upon written demand by Beneficiary, without further consent of Grantor, and without verifying whether an Event of Default has occurred; and the tenants may rely upon any written statement delivered by Beneficiary to the tenants. Any such payment to Beneficiary shall constitute full acquittance to the party making such payment for the amount of such payment.

ARTICLE IV SECURITY AGREEMENT

This Deed of Trust shall be a security agreement between Grantor, as debtor, and Beneficiary, as secured party, respecting the rights of Grantor in and to the Personal Property, and Grantor grants to Beneficiary a security interest in the rights of Grantor in and to such Personal Property (described in Exhibit "B" hereto). In addition to Beneficiary's other rights hereunder, Beneficiary shall have all rights of secured parties under the Uniform Commercial Code as adopted in Tennessee (hereinafter called the "Code"). Grantor shall execute and deliver to Beneficiary all financing statements that may be required by Beneficiary to establish and maintain the validity and priority of Beneficiary's security interest. Upon the occurrence of an Event of Default, Beneficiary or the Trustee may sell the Personal Property as provided in Article VI hereof. This security agreement is supplemental to, and not in derogation of, any separate security agreement which now or hereafter is entered into between the Grantor and the Beneficiary.

ARTICLE V EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

5.1 Failure to Pay Obligations. If Borrower shall fail to pay any part of the Obligations, whether principal or interest, promptly when the same becomes due, and such failure shall continue unremedied for a period of five (5) days following written notice from the Beneficiary to the Borrower; provided, however, that it shall automatically constitute an Event of Default, without any notice or right to cure, if Borrower shall fail to pay the principal and all interest accrued on the indebtedness evidenced by the Note secured hereby on the final maturity date of the Note, or if the Borrower shall fail to pay any sum necessary to satisfy and discharge taxes and assessments prior to delinquency, or to maintain insurance or repairs, or the necessary expense of protecting the Mortgaged Property or the Personal Property and executing this trust; or

5.2 Default Under Other Liens. If any of the Mortgaged Property or the Personal Property be levied upon or attached by legal process, and such levy or attachment shall not be released or dismissed within thirty (30) days following the filing thereof, or if there shall occur any default under or with respect to any Prior Lien, or if the holder of any lien or security interest on the Mortgaged Property or the Personal Property institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; or

5.3 Default on Other Indebtedness. If the Borrower shall default in the payment of any other indebtedness, liability or obligation now or hereafter owed by the Borrower to the Beneficiary and (if there is a cure period applicable thereto) such default is not cured within such cure period; or

5.4 Bankruptcy or Insolvency. If Grantor or Borrower, or any other owner of the Mortgaged Property, or any guarantor of any of the Obligations, shall voluntarily become a party to any insolvency, bankruptcy, composition or reorganization procedure, or make any assignment for the benefit of creditors; or if any involuntary bankruptcy, insolvency, composition, or other reorganization proceedings be filed against Grantor or Borrower, any other owner of the Mortgaged Property, or any guarantor of the Obligations, and the same shall not be dismissed within sixty (60) days after the commencement of any such involuntary proceedings; or

5.5 False Representation. If any statement, representation or warranty in the Loan Documents, any financial statement or any other writing delivered to Beneficiary in connection with the Obligations is false, misleading or erroneous in any material respect; or

5.6 Borrower's Default Under Board Lease. If Borrower shall default in any of its covenants, obligations and undertakings as set forth in the Board Lease, and shall fail to cure said default within the time, if any, permitted by said Board Lease, as applicable, for the cure thereof; or

5.7 Nonperformance of Covenants. If there shall occur any other default in the covenants, warranties, agreements, liabilities, obligations and undertakings of Grantor or Borrower as contained in this Deed of Trust, the Leasehold Deed of Trust or any other Loan Document (including, without limitation, any "Event or Default" as defined in the Loan Agreement), or contained in any other instrument which now or hereafter secures the Obligations, if such default is not cured within a period of thirty (30) days following written notice thereof by the Beneficiary to Borrower, or if there is another cure period specifically applicable to such default, within such applicable cure period.

ARTICLE VI REMEDIES

If an Event of Default shall occur, Beneficiary may exercise any one or more of the following remedies:

6.1 Acceleration. Beneficiary may declare the entire Obligations, principal and interest, immediately due and payable without notice or demand, the same being hereby expressly waived.

6.2 Enforcement of Assignment of Rents and Leases. Beneficiary may:

(a) terminate the license granted to Grantor to collect the Rents (regardless of whether Beneficiary or Trustee shall have entered into possession of the Mortgaged Property), collect and sue for the Rents in Beneficiary's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees, apply the net proceeds thereof to any Obligations as Beneficiary may elect;

(b) make, modify, enforce, cancel or accept surrender of any Leases, evict tenants, adjust Rents, maintain, decorate, refurbish, repair, clean, and make space ready for renting, and otherwise do anything Beneficiary reasonably deems advisable in connection with the Mortgaged Property; and

(c) apply the Rents so collected to the operation and management of the Mortgaged Property, including the payment of reasonable management, brokerage and attorneys' fees, or to the Obligations.

6.3 Power of Sale. Beneficiary may require the Trustee, and the Trustee is hereby authorized and empowered, to enter and take possession of the Mortgaged Property and to sell all or part of the Mortgaged Property, at public auction, to the highest bidder for cash, free from equity of redemption, and any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, after giving notice of the time, place and terms of such sale and of the Mortgaged Property to be sold, by advertising the sale of the property for twenty-one (21) days by three (3) weekly notices in some newspaper published in the county and state where the Mortgaged Property is situated, which notice may be given before or after entry by the Trustee. The Trustee shall execute a conveyance to the purchaser in fee simple and deliver possession to the purchaser, which the Grantor warrants shall be given without obstruction, hindrance or delay. The Trustee may sell all or any portion of the Mortgaged Property, together or in lots or parcels, and may execute and deliver to the purchaser or purchasers of such property a conveyance in fee simple. The Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (a) first, the payment of the expenses of making, maintaining and executing this trust, protection of the Mortgaged Property, including the expense of any litigation and reasonable attorneys' fees, and reasonable compensation to the Trustee; (b) second, to any advancements made by the Trustee or the Beneficiary pursuant hereto, with interest thereon; (c) third, to the payment of the Obligations herein secured or intended so to be, in such order as Beneficiary shall elect, and any balance of said Obligations may be the subject of immediate suit against any party personally liable therefor; and (d) fourth, should there be any surplus, Trustee will pay it to the Grantor, or to such person as may be legally entitled thereto. The sale or sales by Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of the Mortgaged Property shall be less than the aggregate of the Obligations and the expenses thereof, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property; provided, however, that Grantor shall never have any right to require the sale or

sales of less than the whole of the Mortgaged Property, but Beneficiary shall have the right at its sole election, to request the Trustee to sell less than the whole of the Mortgaged Property. Beneficiary may bid and become the purchaser of all or any part of the Mortgaged Property at any such sale, and the amount of Beneficiary's successful bid may be credited on the Obligations.

6.4 Sale of Personal Property. At the request of the Beneficiary the Trustee shall sell the Personal Property concurrently with and in conjunction with a sale of the Mortgaged Property, in which case the provisions of the preceding Section shall apply to the Personal Property as well as the Mortgaged Property. Grantor stipulates and agrees that a sale of the Personal Property in conjunction with the Mortgaged Property is a commercially reasonable manner of disposing of the Personal Property. Alternatively, Beneficiary may sell or otherwise dispose of the Personal Property separately and apart from the Mortgaged Property in the time and manner provided by the Code. To the extent that the Code shall require prior notice of sale or other disposition of the Personal Property, five (5) days' written notice shall be deemed to be reasonable notice. Beneficiary also may (a) require the Borrower to assemble all or part of the Personal Property as directed by Beneficiary and make it available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to the parties; and (b) sell the Personal Property or any part thereof in one or more parcels at public or private sale for cash or credit or for future delivery, and at such price or prices and upon such other terms as Beneficiary may deem commercially reasonable. Beneficiary shall not be obligated to make any sale of the Personal Property regardless of notice of sale having been given. Beneficiary may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

6.5 Entry on Mortgaged Property; Tenancy at Will.

(a) Beneficiary may enter into and upon and take possession of all or any part of the Mortgaged Property, and may exclude Grantor, and all persons claiming under Grantor, and its agents or servants, wholly or partly therefrom; and, holding the same, Beneficiary may use, administer, manage, operate, and control the Mortgaged Property and may exercise all rights and powers of Grantor in the name, place and stead of Grantor, or otherwise, as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

(b) In the event of a trustee's or other foreclosure sale hereunder and if at the time of such sale Grantor or any other party (other than a tenant under a Lease as to which the Beneficiary shall have expressly subordinated the lien of this Deed of Trust as hereinabove set out) occupies the portion of the Mortgaged Property so sold or any part thereof, such occupant shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of such purchaser, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied (but not less than any rental theretofore paid by such tenant, computed on a daily basis). An action of forcible detainer shall lie if any such tenant holds over after a demand in writing for possession of such portion of the Mortgaged Property.

6.6 Receiver. Beneficiary may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Obligations, for appointment of a receiver of the Mortgaged Property, and Grantor does hereby irrevocably consent to such appointment. Any such receiver shall have all necessary and proper powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court.

6.7 Beneficiary's Right to Perform. Upon the failure of Borrower or Grantor to make a payment or perform an act required by the Loan Documents, then at any time thereafter, and without notice to or demand upon Grantor and without waiving or releasing any other right, remedy or recourse, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Grantor and/or Borrower, and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action as Beneficiary may deem necessary or appropriate.

6.8 Remedies Cumulative, Concurrent and Nonexclusive. If the Obligations are now or hereafter further secured by chattel mortgages, deeds of trust, security agreements, pledges, contracts of guaranty, assignments of leases, or other security, Beneficiary may, at its option, exhaust its remedies under any one or more of said instruments and this Deed of Trust, either concurrently or independently, and in such order as Beneficiary may determine. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available to it at law or equity (including, without limitation, those granted by the Code), and same (a) shall be cumulative, concurrent, and nonexclusive, (b) may be pursued separately, successively or concurrently against Grantor or others obligated for the Obligations, or any part thereof or against any one or more of them, or against the Mortgaged Property or the Personal Property, at the sole discretion of Beneficiary, and (c) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise of or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse.

6.9 Grantor's Limitation of Liability. Notwithstanding any of the covenants and conditions contained in this Deed of Trust, as respects the obligations of the Grantor, the exclusive and sole remedy of the Beneficiary and any transferee or endorsee after transfer or endorsement or assignment of this Deed of Trust or of any other Loan Document for an Event of Default shall be foreclosure under this Deed of Trust, and the exercise of the rights granted by the assignor to the Beneficiary in any assignments of rents, leases or profits to such Beneficiary, including the right of enforcement of any such leases or subleases as assigned, or by the guarantor in any guaranty agreement. In the event of foreclosure or the exercise of any rights by the Beneficiary, no deficiency or other personal judgment, nor any order or decree of specific performance nor any recovery or remedy of any kind, shall be sought or rendered against Grantor, or its successors and assigns, (including any incorporator, member, director, officer, employee, counsel or agent of Grantor, their heirs, personal representatives, transferees, successors or assigns, as the case may be). Further, the Beneficiary, by acceptance hereof, acknowledges that as regards the Grantor (including any incorporator, member, director, officer, employee, counsel or agent thereof), it has not relied upon, nor will it in the future rely upon, any warranty, representation or statement by Grantor or its incorporators, members, officers, directors, employees, counsel or agents concerning Borrower's financial condition or affairs or any other matter concerning Borrower. The provisions of this paragraph shall not limit or impair the rights of the Beneficiary as regards the Borrower or any guarantor or endorser of the Obligations, all of whom shall at all times continue to be personally liable for the payment and performance of the Obligations. Nothing contained in this Deed of Trust shall constitute a waiver or otherwise impair Grantor's right to indemnification and reimbursement under the Board Lease or any other right of Grantor under the Board Lease. Notwithstanding the foregoing provisions in this Deed of Trust, nothing hereinabove stated shall in any way prevent or hinder the Beneficiary in the enforcement of foreclosure of the liens, deeds of trust, assignments, rights, and security interests now or at anytime hereafter securing the Loan Documents against the Mortgaged Property or other parties but not against Grantor or its successors and assigns, (including any incorporator, member, director, officer, employee, counsel or agent of Grantor, their heirs, personal representatives, transferees, successors or assigns, as the case may be). Grantor shall not be obligated to take any action or execute any instrument pursuant to any provisions hereof, or any Loan Document until it shall have been requested to do so by the Borrower or the Beneficiary and shall have received from the Borrower or the Beneficiary assurance satisfactory to the Grantor that the Grantor shall be reimbursed for its reasonable expenses incurred or to be incurred and indemnified against all losses and expenses in connection with the taking of such action or executing such

action or executing such document on terms satisfactory to Grantor, and no action shall be taken by Grantor except in its sole discretion.

Grantor, its successors and assigns (including any incorporator, member, director, officer, employee, counsel or agent and their heirs, personal representatives, transferees, successors or assigns, as the case may be), shall have no personal liability for any representation, warranty, covenant or agreement contained herein and is fully exculpated therefrom by Beneficiary, Trustee and Borrower.

ARTICLE VII TRUSTEE

7.1 Employment of Agents. The Trustee, or any one acting in its stead, shall have, in its discretion, authority to employ all proper agents and attorneys in the execution of this trust and/or in the conducting of any sale made pursuant to the terms hereof, and to pay for such services rendered out of the proceeds of the sale of the Mortgaged Property, should any be realized. Trustee may rely on any document believed by it in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon.

7.2 Indemnification of Trustee. If the Trustee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Property or the title thereto, or the interest of the Trustee or Beneficiary under this Deed of Trust, the Trustee and Beneficiary shall be reimbursed by Grantor (to the extent that the Mortgaged Property shall be available to pay same), immediately and without demand, for all reasonable costs, charges and attorney's fees incurred by them or either of them in any such case, and the same shall be secured hereby as a further charge and lien upon the Property.

7.3 Successor Trustee. In the event of the death, refusal, or of inability for any cause, on the part of the Trustee named herein, or of any successor trustee, to act at any time when action under the foregoing powers and trust may be required, or for any other reason satisfactory to the Beneficiary, the Beneficiary is authorized, either in its own name or through an attorney or attorneys in fact appointed for that purpose, by written instrument duly registered, to name and appoint a successor or successors to execute this trust, such appointment to be evidenced by writing, duly acknowledged; and when such writing shall have been registered, the substituted trustee named therein shall thereupon be vested with all the right and title, and clothed with all the power of the Trustee named herein and such like power of substitution shall continue so long as any part of the debt secured hereby remains unpaid.

ARTICLE VIII MISCELLANEOUS

8.1 Waiver of Marshalling and Certain Rights. To the extent that Grantor may lawfully do so, Grantor hereby expressly waives any right pertaining to the marshalling of assets or marshalling of liens, the equity of redemption, any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, or other matter which might defeat, reduce or affect the right of Beneficiary to sell the Mortgaged Property or the Personal Property for the collection of the Obligations, or the right of Beneficiary to the payment of the Obligations out of the proceeds of sale of the Mortgaged Property or the Personal Property, or the proceeds of the Rents and Leases, in preference to every other person and claimant.

8.2 Waiver of Impairment of Recourse Defenses. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for the payment or performance of any of the Obligations, and without affecting the rights of Beneficiary with respect to any security not

expressly released in writing, Beneficiary may, at any time, and from time to time, either before or after the maturity of the Note, and without notice or consent:

- (a) Release any person liable for payment or performance of all or any part of the Obligations;
- (b) Make any agreement extending the time or otherwise altering the terms of payment or of all or any part of the Obligations (without limit as to the number of such extensions or the period or periods thereof), or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;
- (c) Exercise or refrain from exercising any right Beneficiary may have;
- (d) Accept additional security of any kind;
- (e) Release or otherwise deal with any property, real or personal, securing the Obligations, including all or any part of the Mortgaged Property herein described.

Furthermore, the failure of the Beneficiary to perfect any lien granted herein or in any other Loan Document, to take any action to obtain payment or performance of the Obligations or to exercise any rights or remedies available hereunder shall not relieve Grantor or any other person from liability for the payment or performance of the Obligations nor effect a discharge of the lien, security interest or assignment herein granted; it being intended that all "impairment of recourse" and "impairment of collateral" defenses are hereby waived.

8.3 No Waiver. No waiver by the Trustee or the Beneficiary shall be construed as a waiver of a subsequent similar default or any other default by the Grantor or Borrower. No delay by Beneficiary or by the Trustee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder. No failure of Beneficiary to exercise any option herein given to declare the maturity of the debt hereby secured, no forbearance by Beneficiary after the exercise of such option, and no withdrawal or abandonment of foreclosure proceedings by the Beneficiary after the exercise of such option, shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present, or future default on the part of the Grantor. Acceptance by Beneficiary of partial payments shall not constitute a waiver of the default by failure to make full payments.

8.4 Beneficiary's Consent. Except as otherwise expressly provided herein, in any instance hereunder where Beneficiary's approval or consent is required or the exercise of Beneficiary's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Beneficiary, and Beneficiary shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment. Beneficiary may consult with counsel, and the written advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

8.5 Default Rate. If Beneficiary shall expend any money chargeable to Grantor or Borrower or subject to reimbursement by Grantor or Borrower under the terms of this Deed of Trust or any of the other Loan Documents, it shall be the Borrower's obligation to repay the same to Beneficiary immediately at the place where payments under the Note are payable, together with interest thereon from the date due (or, if there is no specified due date, from the date of demand therefor by Beneficiary) until paid at a rate (herein the "Default Rate") equal to the lesser of (a) twenty percent (20%) per annum, or (b) the maximum effective contract rate of interest allowed by applicable law.

8.6 Subrogation. To the extent that proceeds of the Obligations are used to pay any outstanding lien, charge or encumbrance affecting the Mortgaged Property (including, without limiting the generality of the foregoing, any Prior Lien) Beneficiary shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record; provided, however, that the terms and provisions hereof shall govern the rights and remedies of Beneficiary and, to the extent permitted by law without impairing any of Beneficiary's rights of subrogation, shall supersede the terms, provisions, rights, and remedies under the lien or liens to which Beneficiary is subrogated hereunder.

8.7 Payment in Full. If the said Grantor or Borrower shall pay and perform all of the Obligations promptly when due, and shall pay such sums as shall be necessary to discharge taxes and maintain insurance and perform repairs and the costs, fees and expenses of making, enforcing and executing this trust, when they shall severally be due and payable, and shall comply with all of the covenants, terms and conditions of the Note, the Loan Agreement, and this Deed of Trust, and any other instrument which also now or hereafter secures the Obligations secured hereby, then this conveyance shall become void, the Trustee shall reconvey by quitclaim the Mortgaged Property herein described at the expense of the Borrower, and the Beneficiary shall execute and deliver to Grantor, at Grantor's request, such documents as may be necessary to evidence the termination of the security interests and assignments herein granted.

8.8 No Partnership. Nothing contained in this Deed of Trust is intended to create any partnership, joint venture or association between Grantor and Beneficiary, or in any way make Beneficiary a co-principal with Grantor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

8.9 Headings, Use of Terms. The article, paragraph and subparagraph headings hereof are inserted for convenience of reference only and shall not alter, define, or be used in construing the text of such articles, paragraphs or subparagraphs. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders. The term "Grantor" shall include in their individual capacities and jointly all parties hereinabove named a Grantor. The term "Beneficiary" shall include any lawful owner, holder, pledgee, or assignee of any of the Obligations. The duties, covenants, conditions, obligations, and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and each Grantor, if more than one, and each Grantor's heirs, personal representatives, successors and assigns.

8.10 Severability. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective while this Deed of Trust is in effect, the legality, validity and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Deed of Trust a provision that is legal, valid and enforceable and as similar in terms to such illegal, invalid or unenforceable provision as may be possible. If any of the Obligations shall be unsecured, the unsecured portion of the Obligations shall be completely paid prior to the payment of the secured portion of such Obligations, and all payments made on account of the Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligations.

8.11 Burden and Benefit. This instrument shall be binding on Grantor and Grantor's successors and assigns, and shall inure to the benefit of the Beneficiary and Trustee and their respective successors and assigns.

8.12 Applicable Law. This Deed of Trust shall be governed by and construed in accordance with the internal laws of the State of Tennessee without regard to principles of conflicts of laws.

8.13 Binding Arbitration.

(a) AS DETAILED IN THE FOLLOWING PARAGRAPHS, UNDER THIS PROVISION, BENEFICIARY, GRANTOR AND BORROWER EXPRESSLY WAIVE RIGHTS TO PURSUE OR RESOLVE DISPUTES BETWEEN THEM IN COURT OR IN A CLASS ACTION (REGARDLESS OF WHETHER THAT CLASS ACTION IS BROUGHT IN COURT OR IN ARBITRATION).

(b) DISPUTES, CLAIMS, OR CONTROVERSIES (HEREINAFTER "DISPUTES") BETWEEN OR AMONG THE PARTIES TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION. DISPUTES SHALL INCLUDE ALL CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS, THIRD PARTY CLAIMS, INTERPLEADERS, OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND/OR ANY ACTION TAKEN (OR ANY OMISSION TO TAKE ANY ACTION) IN CONNECTION WITH THE FOREGOING. DISPUTES SHALL BE SUBJECT TO BINDING ARBITRATION REGARDLESS OF THE NATURE OF THE CAUSES OF ACTION ASSERTED OR THE RELIEF OR REMEDY SOUGHT. DISPUTES HEREUNDER INCLUDE NOT ONLY DISPUTES THAT BENEFICIARY, BORROWER AND/OR GRANTOR MAY HAVE AGAINST EACH OTHER, BUT ALSO DISPUTES THAT BENEFICIARY, BORROWER AND/OR GRANTOR MAY HAVE AGAINST EACH OTHER'S AFFILIATES, PREDECESSORS, SUCCESSORS, ASSIGNS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES.

(c) BENEFICIARY, BORROWER AND GRANTOR AGREE THAT ARBITRATION REPLACES THE RIGHT TO GO TO COURT, AND THUS THE PARTIES WAIVE ANY RIGHT TO HAVE DISPUTES TRIED BEFORE A JUDGE OR A JURY.

(d) BENEFICIARY, BORROWER AND GRANTOR ALSO AGREE THAT NO PARTY WILL BE ABLE TO PURSUE DISPUTES AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION (SUCH AS AN ACTION IN THE FORM OF A PRIVATE ATTORNEY GENERAL) IN COURT OR IN ARBITRATION, AND THE PARTIES WAIVE THE RIGHT TO DO SO. IF THE PRECEDING SENTENCE IS HELD TO BE INVALID BY A COURT OF LAW, THEN ANY CLASS OR REPRESENTATIVE ACTION WILL NOT BE RESOLVED THROUGH ARBITRATION AND WILL BE RESOLVED IN COURT.

(e) Because this arbitration provision is made pursuant to transactions involving interstate commerce, the parties acknowledge and agree that it shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, as the same may be amended from time to time.

(f) The party pursuing Disputes in arbitration must pursue the Disputes before the American Arbitration Association ("AAA") under the AAA Commercial Finance rules (the "Commercial Finance Rules"). The Commercial Finance Rules and related forms may be obtained from and Disputes may be filed at American Arbitration Association, 335 Madison Avenue, Floor 10, New York, New York 10017-4605, 800-778-7879, www.adr.org. Any arbitration hearing shall be held at a place chosen by the arbitrator(s) or AAA within the federal district in which Borrower's principal place of business is located, or at some other place to which Beneficiary, Borrower and Grantor agree in writing. Judgment upon any arbitration award may be entered in any court having jurisdiction.

(g) In arbitration, resolution of Disputes shall be based solely upon the law of the State of Tennessee and, where applicable, the United States. The arbitrator or arbitrators may not add to, modify, invalidate, or ignore any provision of this agreement or the controlling law. Defenses based on statutes of limitation, estoppel, waiver, laches and similar doctrines, that would otherwise be applicable to

an action brought by a party, shall be applicable in any such arbitration proceeding. In the event of any conflict between the Commercial Finance Rules and this arbitration provision, the terms of this arbitration provision control.

(h) This arbitration provision shall survive termination of this Agreement. If any portion of this provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force.

1.2 WAIVER OF JURY TRIAL. IN THE EVENT THAT THE FOREGOING BINDING ARBITRATION PROVISION IS DEEMED UNENFORCEABLE, AND THUS BENEFICIARY, BORROWER AND/OR GRANTOR ARE REQUIRED TO LITIGATE IN COURT, BENEFICIARY, BORROWER AND GRANTOR HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES, WHETHER ARISING OUT OF OR RELATING TO THIS AGREEMENT BROUGHT BY EITHER PARTY AGAINST THE OTHER.

[The rest of this page intentionally left blank]

IN WITNESS WHEREOF, Grantor has caused this Indenture to be executed by its duly authorized officers on this the day and year first above written.

GRANTOR:

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

By: _____

Name: _____

Title: Chairman

STATE OF TENNESSEE

COUNTY OF _____

Before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be the Chairman of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, a Tennessee public corporation, the within named grantor, and that s/he as such Chairman being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by him/herself as such Chairman.

WITNESS my hand and seal at office, on this the _____ day of _____, 2016.

Notary Public

My Commission Expires:

SUBORDINATION OF LEASE

The undersigned, Grantor as "Lessor", and HERITAGE-MACLELLAN APARTMENTS, LLC ("Lessee"), a Delaware limited liability company doing business in Tennessee, lessor and lessee, respectively, under that certain Lease Agreement entered into by and between Grantor and Lessee bearing date of _____, and recorded in the Register's Office of Hamilton County, Tennessee under Instrument No. _____, (the "Lease"), do hereby subordinate all of their respective rights, title and interest under and pursuant to the Lease and in and to the Mortgaged Property (as defined in the deed of trust to which this subordination is attached) to the right, title and interest of the Trustee and Beneficiary under and pursuant to the Tennessee Fee Deed of Trust With Security Agreement and Assignment of Rents and Lease (the "Fee Trust Deed") to which this subordination is attached.

The undersigned hereby waive all "impairment of recourse" defenses. The undersigned further authorizes the Beneficiary and/or Trustee under the Fee Trust Deed to agree to any renewals, modifications and/or extensions of the Fee Deed of Trust and/or the indebtedness secured thereby; to take and/or release any collateral for and/or guaranties of said indebtedness; and otherwise to take any action, or defer or fail to take action, in enforcing any of their rights and remedies, in each case without impairing or losing the benefit of the subordination herein granted; provided, however, that in no circumstance shall any such renewal, modification, or extension, or any such action of the Beneficiary and/or Trustee, affect Grantor's limitation of liability as set forth in Section 6.9 of the Fee Trust Deed.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Subordination of Lease this _____ day of _____, 2016.

GRANTOR/LESSOR:

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

By: _____
Name: _____
Title: Chairman

STATE OF TENNESSEE
COUNTY OF _____

Before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be the Chairman of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, a Tennessee public corporation, the within named grantor, and that s/he as such Chairman being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by him/herself as such Chairman.

WITNESS my hand and seal at office, on this the _____ day of _____, 2016.

Notary Public

My Commission Expires:

Subordination of Lease

LESSEE: HERITAGE – MACLELLAN APARTMENTS, LLC,
a Delaware limited liability company

By:

Name: William M. Yandell, III

Title: President

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for the State and County aforesaid, personally appeared William M. Yandell, III, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Heritage – Maclellan Apartments, LLC, a Delaware limited liability company registered to do business in the State of Tennessee, the within named bargainor, and that he as such President being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as such President.

WITNESS my hand and seal at office, on this the _____ day of _____, 2016.

Notary Public

My Commission Expires:

EXHIBIT "A"
TO TENNESSEE FEE CONSTRUCTION DEED OF TRUST
WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES

Land situated in Hamilton County, Tennessee:

Being a part of Lots Fifty-two (52) and Fifty-four (54), Original Town, City of Chattanooga, and being more particularly described according to plat of survey prepared by Betts Engineering Associates, Inc., drawing no. 3492-365-Z05, as follows:

To locate the point of beginning, begin at the intersection of the West line of Broad Street with the North line of East Eighth Street and then go North 00 degrees 02 minutes 00 seconds West, with and along the West line of Broad Street, 137 feet to the point of beginning which is located in the North line of an alley; thence North 89 degrees 58 minutes 05 seconds West, with and along said North line of said alley, 99.11 feet; thence South 00 degrees 03 minutes East 0.73 feet; thence South 88 degrees 48 minutes 00 seconds West 27.11 feet; thence South 00 degrees 03 minutes West 11.31 feet to the North face of the building located on the property conveyed to Blue Cross and Blue Shield of Tennessee, a Tennessee Corporation, by Deed of record in Book 2364, Page 407, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 59 minutes 54 seconds West, with and along said building North face, 110 feet to a point in the East line of Chestnut Street; thence North 00 degrees 07 minutes East, with and along the East line of Chestnut Street, 84.94 feet in a point on the South face of the South wall of the Tivoli Theatre (being the property conveyed to the City of Chattanooga, Tennessee by Deed of record in Book 2304, Page 743, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 57 minutes 47 seconds East, with and along the South face of the South wall of the Tivoli Theatre 118.09 feet, to a point where the South face of the South wall of the Tivoli Theatre turns and runs in a Northeastwardly direction; thence North 50 degrees 19 minutes 19 seconds East, with and along the Southeast face of the Southeast wall of the Tivoli Theatre, 15.62 feet to a point where the Southeast face of the Southeast wall of the Tivoli Theatre turns and runs in a Northwardly direction; thence North 00 degrees 07 minutes 01 seconds West, with and along the East face of the East wall of the Tivoli Theatre, 40.86 feet, to a point where the East face of the East wall of the Tivoli Theatre turns and runs in an Eastwardly direction; thence South 89 degrees 57 minutes 11 seconds East, with and along the South face of the South wall of the Tivoli Theatre, 105.95 feet, to a point in the West line of Broad Street; thence South 00 degrees 02 minutes East, with and along the West line of Broad Street, 123.21 feet to the point of beginning.

EXHIBIT "B"
TO TENNESSEE FEE CONSTRUCTION DEED OF TRUST
WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES

All personal property now or at any time hereafter located upon, related to the use of, or intended to be used in connection with the real property described in **Exhibit "B,"** in which the Grantor presently has an interest or acquires an interest in the future including, but not limited to, the following:

- (a) All heating, plumbing, lighting, water heating, incinerating, ventilating, and air-conditioning equipment, shades, awnings, blinds, linoleums, rugs and carpeting, signs, elevators, and all other machinery, tools, equipment, and fixtures;
- (b) All headboards, mattresses, box springs, nightstands, mirrors, bed frames, party tables, game chairs, tables, chairs, dressers, dresser lamps, nightstand lamps, hang lamps, lamps, pictures, picture frames, end tables, bunching tables, sofas, lounge chairs;
- (c) All conference-style tables, blackboards, credenzas, banquet chairs, movie screens, projectors, podiums, long banquet tables, round top pedestal tables, easels, and all other furniture and furnishings;
- (d) All filing cabinets, executive-type chairs, side chairs, executive desks, secretarial desks, calculators, addressographs, adding machines, electric pencil sharpeners, emergency medical equipment, safes, coat racks, typewriters, paper cutters, cash registers;
- (e) All refrigerators, microwave ovens, ovens, stoves, ranges, burners, broilers, fryers, mixers, tenderizers, food warmers, plate warmers, food slicers, chain saws, buffet servers, food caddies, freezers, toasters, roll warmers, milk dispensers, ice makers, ice cream makers, food choppers, coffee makers, steamers, chafers, dishwashers, glass warmers, disposals, stainless steel ware, cutlery, silverware, glassware, brushes, mops, brooms, and all other appliances and hardware;
- (f) All tables, carousels, chandeliers, wall hangings, draperies, side stands, dividers, bus stands, hostess stands, pictures, coat stands, booths, booth seats, flaming carts, sofas, chairs, mirrored side stands, china, silverware, glassware, ashtrays, salt and pepper shakers, pots, pans, grills;
- (g) All bar materials, blenders, mixed drink glasses, bar stools, tables, chairs, sofas, lounge chairs, small refrigerators, cash registers;
- (h) All sheets, towels, linens, paper goods, cleaning products, toiletries and all other supplies and inventory;
- (i) All artificial plants, real plants, pianos, stage lights, spot lights, signs, sound equipment, turn tables, speakers, light control boards, hot plates, trash cans, garbage cans, clothes washers, dryers, air compressors, sheet folders, towel folders, urns, clocks;
- (j) All telephones, telephone equipment, television sets and related equipment, computers, computer software and systems (provided that, if and to the extent that Grantor shall lease any such equipment, as permitted by Beneficiary, the security interest therein shall consist of Grantor's rights under such leases);

(k) And all other personal property, of every kind and nature, movable or immovable, and all parts thereof and replacements, additions, and accessions thereto, now or at any time hereafter located upon or intended to be used in connection with the real property (the "premises") described in Exhibit "A," attached hereto hereinabove and incorporated herein by reference as fully as if set out herein verbatim;

(l) All building materials now or hereafter located on said real property, prior to incorporation of said building materials in the improvements on said premises;

(m) All plans and specifications related to the property and any and all improvements now existing or hereafter to be constructed on the property;

(n) All rents, incomes, profits, revenues, royalties, bonuses, rights, accounts, contract rights, general intangibles, and benefits under any and all leases or tenancies now existing or hereafter created of said premises, any improvements thereon, or any part thereof;

(o) All leases, subleases and other rental arrangements (however denominated, and including, without limitation, arrangements for the rental of rooms) covering the premises or any portion thereof now or hereafter existing or entered into, and all rights and interests thereunder, including, without limitation, all cash or security deposits, advance rentals, guarantees and deposits of similar nature;

(p) All judgments, awards of damages and settlements hereafter made as a result of or in lieu of any taking of said premises and improvements or any part thereof or interest therein under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to said premises or the improvements thereon or any part thereof or interest therein, including any award for change of grade of streets;

(q) All proceeds of hazard or other insurance policies maintained with respect to any Collateral described above or with respect to the improvements now or hereafter located on said premises (whether or not Beneficiary is loss payee thereof);

(r) All contract rights, general intangibles, and benefits under any servicing or franchise agreements now existing or hereafter entered into concerning or related to the use, operation or management of the premises or the improvements;

(s) All proceeds of any and all of the foregoing collateral. Although proceeds are covered, Beneficiary does not authorize the sale or other transfer of any of the collateral or the transfer of any interest in the collateral;

(t) All ledgers, books of account and records of the Debtor (Grantor) relating to any of the collateral described in paragraphs (a) through (i);

in each case, whether now owned or hereafter acquired by the Debtor (Grantor) and howsoever the interest of Debtor (Grantor) therein may arise or appear (whether by ownership, lease security interest, claim, or otherwise).

NAME OF RECORD OWNER OF REAL PROPERTY DESCRIBED IN EXHIBIT "A":

HERITAGE-MACLELLAN APARTMENTS, LLC

4820-9310-5708, v. 3

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

THIS AGREEMENT is made and entered into as of the 6th day of April , 2016, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, a public corporation duly created and existing under the laws of the State of Tennessee (the "Board"); HERITAGE - MACLELLAN APARTMENTS, LLC, a Delaware limited liability company (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 a renovation of the historic Maclellan Building including the construction of apartments with mixed sizes of 40 studio, 42 one (1) bedroom, and 8 two (2) bedroom 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 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 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 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 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 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.

(a) Property Exclusive of Improvements. For each of the years 2015 and thereafter, the Company shall make 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 2015 (the "Base Year") on the value of the associated Property (land, buildings, etc.). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the value of the property in the Base Year exclusive of the improvements made in connection with the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Improvements. After construction of the Project is completed and the Assessor of Property has reassessed the then improved 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"), which the parties acknowledge and agree currently equates to 27.1% 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. Additional In Lieu Payments on the improvements will be as follows:

Year	City General Fund ⁽¹⁾	County General Fund ⁽¹⁾	County School Fund ⁽¹⁾
2016 – 2029	0%	0%	100%
2030	20%	20%	100%
2031	40%	40%	100%
2032	60%	60%	100%
2033	80%	80%	100%
2034	100%	100%	100%

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

As noted above, during such years 2016 to 2034, the Company shall continue to pay the School Portion attributable to the Hamilton County Schools. For any periods before or after such 18-year 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.

(c) For each of the years 2016 to 2034, the Company shall make In Lieu Payments with respect to the commercial and retail space on the first floor of the Property 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 that portion of 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 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 (1½%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1½%) 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) 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 annually defined in 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 the Treasurer and Trustee. All sums received by the Treasurer pursuant to Paragraph 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 Paragraph 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 Paragraph 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 §7-53-305.

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, on or before January 31 of each calendar year during this Agreement, an annual report to the Board, the Mayor of the City, and the Mayor of the County, summarizing its investment in the Property and a certified rent roll. An independent audit of the annual report 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. William M. Yandell, III, Heritage - Maclellan Apartments, LLC, 5350 Poplar Avenue, Suite 730, Memphis, Tennessee 38119; 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.

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. Except as 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.

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'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.

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:

By: Dan B. Fran

Secretary

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

By: Hicks Amos

Chairman

HERITAGE - MACLELLAN APARTMENTS, LLC

By: _____

Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: My Bl

Mayor

HAMILTON COUNTY, TENNESSEE

By: _____

County Mayor

WILLIAM F. HULLANDER

By: _____

Hamilton County Trustee

WILLIAM C. BENNETT

By: _____

Hamilton County Assessor of
Property

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


ATTEST:

By: _____
Secretary

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

By: _____
Chairman

HERITAGE - MACLELLAN APARTMENTS, LLC

By: 
Title: President

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

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and date first above written.

ATTEST:

By: _____
Secretary

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

By: _____
Chairman

HERITAGE - MACLELLAN APARTMENTS, LLC

By: _____
Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

HAMILTON COUNTY, TENNESSEE

By: J. M. Gappin
County Mayor

WILLIAM F. HULLANDER

By: William F. Hullander
Hamilton County Trustee

WILLIAM C. BENNETT

By: William C. Bennett
Hamilton County Assessor of
Property

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

REAL PROPERTY

Land situated in Hamilton County, Tennessee:

Being a part of Lots Fifty-two (52) and Fifty-four (54), Original Town, City of Chattanooga, and being more particularly described according to plat of survey prepared by Betts Engineering Associates, Inc., drawing no. 3492-365-Z05, as follows:

To locate the point of beginning, begin at the intersection of the West line of Broad Street with the North line of East Eighth Street and then go North 00 degrees 02 minutes 00 seconds West, with and along the West line of Broad Street, 137 feet to the point of beginning which is located in the North line of an alley; thence North 89 degrees 58 minutes 05 seconds West, with and along said North line of said alley, 99.11 feet; thence South 00 degrees 03 minutes East 0.73 feet; thence South 88 degrees 48 minutes 00 seconds West 27.11 feet; thence South 00 degrees 03 minutes West 11.31 feet to the North face of the building located on the property conveyed to Blue Cross and Blue Shield of Tennessee, a Tennessee Corporation, by Deed of record in Book 2364, Page 407, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 59 minutes 54 seconds West, with and along said building North face, 110 feet to a point in the East line of Chestnut Street; thence North 00 degrees 07 minutes East, with and along the East line of Chestnut Street, 84.94 feet in a point on the South face of the South wall of the Tivoli Theatre (being the property conveyed to the City of Chattanooga, Tennessee by Deed of record in Book 2304, Page 743, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 57 minutes 47 seconds East, with and along the South face of the South wall of the Tivoli Theatre 118.09 feet, to a point where the South face of the South wall of the Tivoli Theatre turns and runs in a Northeastwardly direction; thence North 50 degrees 19 minutes 19 seconds East, with and along the Southeast face of the Southeast wall of the Tivoli Theatre, 15.62 feet to a point where the Southeast face of the Southeast wall of the Tivoli Theatre turns and runs in a Northwardly direction; thence North 00 degrees 07 minutes 01 seconds West, with and along the East face of the East wall of the Tivoli Theatre, 40.86 feet, to a point where the East face of the East wall of the Tivoli Theatre turns and runs in an Eastwardly direction; thence South 89 degrees 57 minutes 11 seconds East, with and along the South face of the South wall of the Tivoli Theatre, 105.95 feet, to a point in the West line of Broad Street; thence South 00 degrees 02 minutes East, with and along the West line of Broad Street, 123.21 feet to the point of beginning.

TOGETHER WITH all rights appurtenant thereto by virtue of the following language appearing in Deed of record in Book V, Volume 17, Page 689, in the Register's Office of Hamilton County, Tennessee: "and the Grantor agrees for himself, heirs and assigns, to maintain as a private way the twelve (12) foot alley between the James Building and said Annex Building, as now opened," as affected by Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.

TOGETHER WITH such other rights as are appurtenant thereto by virtue of Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.

PERSONAL PROPERTY

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

Prepared by and Return to:	Property Owner:	Mail Tax Bills To:	Property Address:	Tax Parcel No.:
Butler Snow LLP Attn: Geoffrey Hirsch 6075 Poplar Ave., Ste 500 Memphis, TN 38119 (901) 680-7200	The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee c/o Phillip A. Noblett, Deputy City Attorney 100 E. 11 th St., Ste 200 Chattanooga, TN 37402	Heritage - Maclellan Apartments, LLC 5350 Poplar Ave., Ste 730 Memphis, TN 38119	721 Broad Street Chattanooga, TN 37402	Map 145CBA, Parcel 005

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that **HERITAGE - MACLELLAN APARTMENTS, LLC**, a Delaware limited liability company ("Grantor"), for and in consideration of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, does hereby bargain, sell, remise, release, quit claim and convey unto **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE**, a public corporation duly created and existing under the laws of the State of Tennessee ("Grantee"), all of its right, title and interest in and to the following described real estate situated and being in Chattanooga, Hamilton County, State of Tennessee to, wit:

All of that certain real estate described in Exhibit A attached hereto and incorporated herein by this reference.

The aforesaid real estate being the same real estate conveyed to Grantor by special warranty deed of record in Book GI 10515, Page 208, in the Register's Office of Hamilton County, Tennessee.

As used herein, pronouns shall be construed according to their gender and number according to the context thereof.

Dated: April 6, 2016.

[signature follows]

Book/Page: **GI 10719 / 689**

Instrument: 2016041800165

4 Page QUITCLAIM DEED

Recorded by KML on 4/18/2016 at 11:50 AM

DEED RECORDING FEE 20.00

DATA PROCESSING FEE 2.00

TOTAL FEES \$22.00

State of Tennessee Hamilton County
Register of Deeds **PAM HURST**

FEDEX CHRISTINA ANDERSON
6060 POPLAR AVE
STE LL-37
MEMPHIS TN, 38119

CK 1523307412 1/5

689 61201

[Signature page to Quit Claim Deed]

IN WITNESS WHEREOF, Grantor has executed or caused this instrument to be executed by its duly authorized representative as of the date first written above.

HERITAGE – MACLELLAN APARTMENTS, LLC

By: 

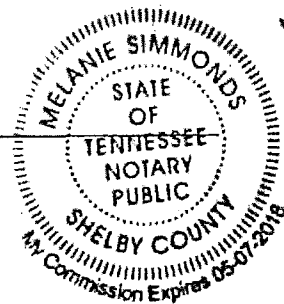
William M. Yandell, III
President

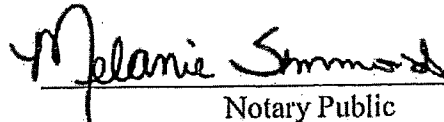
STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public of the State and County aforesaid, personally appeared William M. Yandell, III, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself (or herself) to be the president of Heritage – Maclellan Apartments, LLC, the within named bargainor, a limited liability company, and that he (or she), as such officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself (or herself) as such officer.

WITNESS my hand, at office, this 6th day of April, 2016.


My Commission Expires:




Notary Public

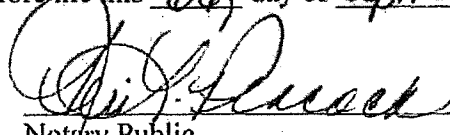
AFFIDAVIT OF VALUE

I, or we, hereby swear or affirm that, to the best of affiant's knowledge, information, and belief, the actual consideration for this transfer is \$0.



Affiant

Subscribed and sworn to before me this 6th day of April, 2016.



Notary Public

My Commission Expires: March 7, 2017



EXHIBIT A
TO QUIT CLAIM DEED

Legal Description

Land situated in Hamilton County, Tennessee:

Being a part of Lots Fifty-two (52) and Fifty-four (54), Original Town, City of Chattanooga, and being more particularly described according to plat of survey prepared by Betts Engineering Associates, Inc., drawing no. 3492-365-Z05, as follows:

To locate the point of beginning, begin at the intersection of the West line of Broad Street with the North line of East Eighth Street and then go North 00 degrees 02 minutes 00 seconds West, with and along the West line of Broad Street, 137 feet to the point of beginning which is located in the North line of an alley; thence North 89 degrees 58 minutes 05 seconds West, with and along said North line of said alley, 99.11 feet; thence South 00 degrees 03 minutes East 0.73 feet; thence South 88 degrees 48 minutes 00 seconds West 27.11 feet; thence South 00 degrees 03 minutes West 11.31 feet to the North face of the building located on the property conveyed to Blue Cross and Blue Shield of Tennessee, a Tennessee Corporation, by Deed of record in Book 2364, Page 407, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 59 minutes 54 seconds West, with and along said building North face, 110 feet to a point in the East line of Chestnut Street; thence North 00 degrees 07 minutes East, with and along the East line of Chestnut Street, 84.94 feet to a point on the South face of the South wall of the Tivoli Theatre (being the property conveyed to the City of Chattanooga, Tennessee by Deed of record in Book 2304, Page 743, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 57 minutes 47 seconds East, with and along the South face of the South wall of the Tivoli Theatre 118.09 feet, to a point where the South face of the South wall of the Tivoli Theatre turns and runs in a Northeastwardly direction; thence North 50 degrees 19 minutes 19 seconds East, with and along the Southeast face of the Southeast wall of the Tivoli Theatre, 15.62 feet to a point where the Southeast face of the Southeast wall of the Tivoli Theatre turns and runs in a Northwardly direction; thence North 00 degrees 07 minutes 01 seconds West, with and along the East face of the East wall of the Tivoli Theatre, 40.86 feet, to a point where the East face of the East wall of the Tivoli Theatre turns and runs in an Eastwardly direction; thence South 89 degrees 57 minutes 11 seconds East, with and along the South face of the South wall of the Tivoli Theatre, 105.95 feet, to a point in the West line of Broad Street; thence South 00 degrees 02 minutes East, with and along the West line of Broad Street, 123.21 feet to the point of beginning.

TOGETHER WITH all rights appurtenant thereto by virtue of the following language appearing in Deed of record in Book V, Volume 17, Page 689, in the Register's Office of Hamilton County, Tennessee: "and the Grantor agrees for himself, heirs and assigns, to maintain as a private way the twelve (12) foot alley between the James Building and said Annex Building, as now opened," as affected by Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.

TOGETHER WITH such other rights as are appurtenant thereto by virtue of Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.

THIS INSTRUMENT PREPARED BY
AND RETURN TO:
Richard E.M. Nichol, Jr.
Evans Petree PC
1000 Ridgeway Loop Road, Suite 200
Memphis, TN 38120

MAXIMUM PRINCIPAL INDEBTEDNESS FOR
TENNESSEE RECORDING TAX PURPOSES
IS \$-0-

Said transaction being exempt
pursuant to TCA 67-4-409 (F)(1).

**TENNESSEE FEE DEED OF TRUST
WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES
(INCLUDES FIXTURE FILING UNDER UNIFORM COMMERCIAL CODE)**

THIS INDENTURE is made and entered into as of the 11th day of April, 2016, by and among **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE**, a public not-for-profit corporation of the State of Tennessee, whose address is 100 East 11th Street, Suite 200, Chattanooga, Tennessee 37402, party of the first part (hereinafter called "Grantor"), Greg Smithers, as TRUSTEE, having an address of 4894 Poplar Avenue, Memphis, Tennessee 38117, a resident of Shelby County, Tennessee, party of the second part (hereinafter called "Trustee"), and **IBERIABANK**, a Louisiana state banking corporation, whose address is 4894 Poplar Avenue, Memphis, Tennessee 38117, party of the third part (hereinafter called "Bank"). This instrument covers property which is or may become so affixed to real property as to become fixtures and also constitutes a fixture filing under § 47-9-502 of Tennessee Code Annotated. NOTICE PURSUANT TO § 47-28-104 OF TENNESSEE CODE ANNOTATED: This Deed of Trust secures future advances which are "obligatory advances" as defined in the aforesaid statute. This Deed of Trust is for "commercial purposes" as defined in said statute.

FOR AND IN CONSIDERATION OF FIVE DOLLARS (\$5.00) cash in hand paid by the Trustee to the Grantor, and the debt and trusts hereinafter mentioned, the said Grantor has bargained and sold, and does hereby bargain, sell, convey and confirm unto the said Trustee the real property (said real property together with the Improvements (hereinafter defined) being herein called the "Mortgaged Property") situated and being in the City of Chattanooga, Hamilton County, Tennessee, more particularly described in Exhibit "A," attached hereto and made a part hereof as fully and particularly as if set out herein verbatim, together with:

(a) All the improvements now on or which may be hereafter placed on said real property during the existence of this lien; and

(b) All the income, rents, issues and profits arising therefrom and for the use thereof; and

(c) All materials, equipment, furnishings or other property whatsoever installed or to be installed and used in and about the building or buildings on said real property, including, but not being limited to, all heating, plumbing, lighting, water-heating, cooking, refrigerating, incinerating, ventilating and air conditioning equipment, storm doors and windows, shades, rugs, carpeting, awnings, blinds, drapes, and linoleums, and property of like nature, all of which property and things are hereby declared to be permanent accessions to the freehold and part of the real property conveyed herein as security for the Obligations (hereinafter defined) (the property described in the foregoing paragraph (a) and this paragraph (c) being sometimes herein called the "Improvements"); and

(d) All estate, right, title and interest of Grantor in and to all leases and subleases covering the Mortgaged Property or any portion thereof now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, guarantees and deposits of similar nature;

FEDEX CHRISTINA ANDERSON
6060 POPLAR AVE
STE LL-37
MEMPHIS TN, 38119

Book/Page: **GI 10719 / 710**

Instrument: 2016041800167

20 Page DEED OF TRUST

Recorded by KML on 4/18/2016 at 11:50 AM

TOTAL FEES

\$107.00

State of Tennessee Hamilton County
Register of Deeds

PAM HURST

1 MULTI DOCUMENT FEE 5.00
D T RECORDING FEE 100.00
DATA PROCESSING FEE 2.00

10719 693

TO HAVE AND TO HOLD, the aforescribed Mortgaged Property, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining unto the said Trustee, their successors in trust and assigns, in fee simple forever.

BUT THIS IS A TRUST DEED, and is made for the following uses and purposes, and none other; that is to say: **HERITAGE-MACLELLAN APARTMENTS, LLC**, a Delaware limited liability company doing business in Tennessee ("Borrower"), is justly indebted to Bank or the holder of the note hereinafter mentioned (said Bank or such holder being hereinafter sometimes called the "Beneficiary"), in the principal sum of **Eleven Million Four Hundred Thirty-Five Thousand Dollars (\$11,435,000.00)** evidenced by:

That certain promissory note ("Note") of even date herewith, in the principal amount of Eleven Million Four Hundred Thirty-Five Thousand Dollars (\$11,435,000.00) bearing interest from date until maturity at the rate specified in said Note, said interest being payable monthly as provided in said Note, the principal of said Note being due and payable on or before April 11, 2021, said Note being payable to the order of Bank, at the offices of Bank, at the address indicated on the billing statement provided by Bank, or at such other place as the Beneficiary may designate in writing, being executed by the Borrower, and being given for value received (said Note being incorporated herein by reference as fully and particularly as if set out herein verbatim).

AS FURTHER SECURITY, Grantor hereby pledges, assigns and grants to Beneficiary a continuing security interest in the property (the "Personal Property") described in **Exhibit "B,"** attached hereto and incorporated herein by reference [the property described in subparagraphs (a) and (b) of **Exhibit "B"** being sometimes herein called the "Tangible Personal Property"].

Grantor desires to secure and make certain the payment of the indebtedness evidenced and to be evidenced by the Note, and any and all renewals, modifications and extensions thereof, in whole or in part and also the payment and performance of the other Obligations, as hereinafter defined.

NOW, THEREFORE, so long as any part of the Obligations shall remain unpaid or unperformed, Grantor covenants, agrees, represents and warrants as follows:

ARTICLE I OBLIGATIONS DEFINED

The following obligations of the Grantor and Borrower are hereinafter collectively called the "Obligations":

1.1 Note. Payment of the indebtedness (and interest thereon) evidenced and to be evidenced by the Note, and of any and all renewals, modifications, substitutions, replacements, restatements and extensions thereof, in whole or in part, including all future advances;

1.2 Loan Agreement. Payment and performance of all fees, expenses, indebtednesses, liabilities and obligations of Borrower under that certain Amended and Restated Loan Agreement (the "Loan Agreement") of even date herewith among Borrower, the Beneficiary and certain guarantors therein mentioned, as amended or modified from time to time (any references to said Loan Agreement only being applicable if there is in fact a Loan Agreement);

1.3 Deed of Trust. Payment of all sums advanced by Beneficiary to or for the benefit of Grantor contemplated hereby and performance of all obligations and covenants herein contained, including, without limitation, any amounts advanced to protect the trust estate and security interests

herein granted and all attorneys' fees, court costs, and expenses of whatever kind incident thereto or to the collection of the indebtednesses and obligations hereby secured and/or enforcement of the liens and security interests herein granted;

1.4 Leasehold Deed of Trust. Payment and performance of all indebtednesses, liabilities and obligations of the Borrower under and pursuant to that certain Leasehold Deed of Trust with Security Agreement and Assignment of Leases and Rents (the "Leasehold Deed of Trust"), of even date herewith, executed by the Borrower in favor of the Beneficiary, for the purpose of securing the payment of the same Obligations as are secured by this instrument.

1.5 Other Indebtednesses Under the Note. Payment of all other indebtednesses arising under or in connection with this Deed of Trust, the Leasehold Deed of Trust, the Note, the Loan Agreement or any other instrument or document now or at any time evidencing, securing or guaranteeing the same (collectively the "Loan Documents").

1.6 Lease. Payment and performance of all indebtednesses, liabilities and obligations of Borrower under and pursuant to that certain Lease Agreement entered into by and between Grantor and Borrower bearing date of April 6, 2016 and recorded in the Register's Office of Hamilton County, Tennessee under Instrument No. BK 16719-8693 (the "Board Lease"), and any and all renewals, modifications, restatements or replacements thereof, in whole or in part.

ARTICLE II COVENANTS AND AGREEMENTS AS TO MORTGAGED PROPERTY

Grantor does hereby covenant, warrant and represent to and agree with Beneficiary as follows:

2.1 Eminent Domain. Grantor hereby transfers, sets over, and assigns to Beneficiary all judgments, awards of damages and settlements hereafter made as a result or in lieu of any taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets. Beneficiary is hereby authorized, but not required, in behalf and in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such judgments or awards. Beneficiary may apply all such sums or any part thereof so received, after the payment of all of its expenses, including costs and reasonable attorney's fees, on the Obligations secured hereby, whether due or not, in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released to the Grantor or other party lawfully entitled thereto.

2.2 Repair, Waste, Alterations, etc. Grantor shall not remove or demolish or alter the design or structural character of any Improvements now or hereafter erected upon the Mortgaged Property without the prior written consent of Beneficiary unless such removal, demolition or alteration is contemplated and permitted by the Loan Documents.

2.3 Advances by Beneficiary to Protect Collateral. If the Borrower shall default in paying taxes, making payments in lieu of taxes, maintaining insurance or making repairs, the Beneficiary may, at its discretion, advance and pay such sums as may be proper to satisfy taxes, maintain insurance and make repairs, and protect and preserve the Mortgaged Property and Personal Property, and such amounts so paid shall be treated as part of the expense of administering this trust, shall be repaid by Borrower on demand with interest at the Default Rate (hereinafter defined), and shall be secured by the lien hereof. However, the making of any such payment by Beneficiary shall not be construed as a waiver of any default of Borrower.

2.4 Mechanics' Liens. Beneficiary has not consented and will not consent to any contract or to any work or to the furnishing of any materials which might be deemed to create a lien or liens superior to the lien of this instrument, either under § 66-11-108 of Tennessee Code Annotated, or otherwise.

2.5 Compliance with Laws. Grantor, the Mortgaged Property, the Personal Property, and the use thereof by Grantor shall comply with all laws, rules, ordinances, regulations, covenants, conditions, restrictions, orders and decrees of any governmental authority or court applicable to Grantor or the Mortgaged Property and its use.

2.6 Further Assurances. Grantor, upon the request of Beneficiary, shall execute, acknowledge, deliver, and record such further instruments and do such further acts as may be necessary, desirable or proper to carry out the purposes of this instrument and the other Loan Documents and to subject to the liens and security interests created thereby any property intended by the terms thereof to be covered thereby, including specifically but without limitation any renewals, additions, substitutions, replacements, improvements, or appurtenances to the Mortgaged Property or the Personal Property.

2.7 Inspection of Premises. Until the Obligations shall have been fully paid and satisfied, Beneficiary and its agents shall have the right at all reasonable times to inspect the Mortgaged Property, the Personal Property and the other security for the Obligations, and all applicable books and financial records relating thereto.

2.8 Due on Sale or Encumbrance. Grantor covenants and agrees with Beneficiary that the entire Obligations secured by this Deed of Trust shall, at the absolute option of Beneficiary, be and become immediately due and payable should the Grantor, without the prior written consent of Beneficiary (which consent may be given or withheld in the sole and absolute discretion of Beneficiary), sell, assign, transfer, convey, lease with option to purchase, enter into a contract for sale, grant an option to purchase, or further encumber any or all of Grantor's interest in the Mortgaged Property or the Personal Property, or any portion thereof, or permit the same to be sold, assigned, transferred, conveyed, contracted for or further encumbered.

ARTICLE III ASSIGNMENT OF RENTS AND LEASES

3.1 Assignment of Rents and Leases. All of the rents, royalties, bonuses, issues, profits, revenue, income, deposits, escrow accounts and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any existing or future lease or agreement pertaining thereto and liquidated damages following default under such leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Mortgaged Property, together with any and all rights that Grantor may have against any tenant under such leases or any subtenants or occupants of any part of the Mortgaged Property and any award made hereafter to Grantor in any court proceeding involving any of the tenants or in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court, and all payments by tenants in lieu of rent other than any payments in lieu of taxes (all hereinafter collectively called the "Rents"), are hereby absolutely and unconditionally assigned to Beneficiary, to be applied by Beneficiary in payment of the Obligations. Grantor hereby further assigns to Beneficiary all existing and future leases, including subleases, any and all extensions, renewals, modifications, and replacements thereof, and all guaranties of tenants' performance thereunder, upon any part of the Mortgaged Property (the "Leases"). It is understood and agreed by the parties that this assignment is intended to be and is an absolute assignment from Grantor to Beneficiary, and not merely the passing of a security interest; provided, however, that prior to an Event of Default, Grantor shall have a license, without joinder of Beneficiary, to enforce the Leases and to collect the Rents as they come due and to retain, use and enjoy

the same. Grantor shall, upon request of Beneficiary, execute confirmatory assignments of any specific leases affecting any part of the Mortgaged Property.

3.2 Prior Approval for Actions Affecting Leases. Grantor shall not, without the prior written consent of Beneficiary:

- (a) receive or collect Rents not yet due under the terms of any of the Leases;
- (b) waive or release any obligation of any tenant under the Leases or any party liable under the Leases;
- (c) cancel, terminate or modify any of the Leases, cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of the Leases, except upon default by the tenant thereunder; or
- (d) change, alter or modify any of the Leases.

3.3 No Obligation upon Beneficiary. Beneficiary's acceptance of the assignment of Leases and Rents provided for herein shall not obligate Beneficiary to appear in or defend any proceeding relating to any of the Leases or to the Mortgaged Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Grantor by any tenant. Beneficiary shall not be liable for any injury or damage to person or property in or about the Mortgaged Property.

3.4 : Merger. There shall be no merger of the leasehold estates created by the Leases (including the Board Lease) with the fee estate of the Mortgaged Property without the prior written consent of Beneficiary.

3.5 : Right to Rely. Grantor hereby authorizes Beneficiary to give notice in writing of this assignment at any time to any tenant under any of the Leases, and from and after the occurrence of an Event of Default hereunder, to direct any such tenant to make payment of rentals and other amounts due directly to Beneficiary. Grantor hereby authorizes and directs the tenants under the Leases to pay Rents to Beneficiary upon written demand by Beneficiary, without further consent of Grantor, and without verifying whether an Event of Default has occurred; and the tenants may rely upon any written statement delivered by Beneficiary to the tenants. Any such payment to Beneficiary shall constitute full acquittance to the party making such payment for the amount of such payment.

ARTICLE IV SECURITY AGREEMENT

This Deed of Trust shall be a security agreement between Grantor, as debtor, and Beneficiary, as secured party, respecting the rights of Grantor in and to the Personal Property, and Grantor grants to Beneficiary a security interest in the rights of Grantor in and to such Personal Property (described in Exhibit "B" hereto). In addition to Beneficiary's other rights hereunder, Beneficiary shall have all rights of secured parties under the Uniform Commercial Code as adopted in Tennessee (hereinafter called the "Code"). Grantor shall execute and deliver to Beneficiary all financing statements that may be required by Beneficiary to establish and maintain the validity and priority of Beneficiary's security interest. Upon the occurrence of an Event of Default, Beneficiary or the Trustee may sell the Personal Property as provided in Article VI hereof. This security agreement is supplemental to, and not in derogation of, any separate security agreement which now or hereafter is entered into between the Grantor and the Beneficiary.

ARTICLE V EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

5.1 Failure to Pay Obligations. If Borrower shall fail to pay any part of the Obligations, whether principal or interest, promptly when the same becomes due, and such failure shall continue unremedied for a period of five (5) days following written notice from the Beneficiary to the Borrower; provided, however, that it shall automatically constitute an Event of Default, without any notice or right to cure, if Borrower shall fail to pay the principal and all interest accrued on the indebtedness evidenced by the Note secured hereby on the final maturity date of the Note, or if the Borrower shall fail to pay any sum necessary to satisfy and discharge taxes and assessments prior to delinquency, or to maintain insurance or repairs, or the necessary expense of protecting the Mortgaged Property or the Personal Property and executing this trust; or

5.2 Default Under Other Liens. If any of the Mortgaged Property or the Personal Property be levied upon or attached by legal process, and such levy or attachment shall not be released or dismissed within thirty (30) days following the filing thereof, or if there shall occur any default under or with respect to any Prior Lien, or if the holder of any lien or security interest on the Mortgaged Property or the Personal Property institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; or

5.3 Default on Other Indebtedness. If the Borrower shall default in the payment of any other indebtedness, liability or obligation now or hereafter owed by the Borrower to the Beneficiary and (if there is a cure period applicable thereto) such default is not cured within such cure period; or

5.4 Bankruptcy or Insolvency. If Grantor or Borrower, or any other owner of the Mortgaged Property, or any guarantor of any of the Obligations, shall voluntarily become a party to any insolvency, bankruptcy, composition or reorganization procedure, or make any assignment for the benefit of creditors; or if any involuntary bankruptcy, insolvency, composition, or other reorganization proceedings be filed against Grantor or Borrower, any other owner of the Mortgaged Property, or any guarantor of the Obligations, and the same shall not be dismissed within sixty (60) days after the commencement of any such involuntary proceedings; or

5.5 False Representation. If any statement, representation or warranty in the Loan Documents, any financial statement or any other writing delivered to Beneficiary in connection with the Obligations is false, misleading or erroneous in any material respect; or

5.6 Borrower's Default Under Board Lease. If Borrower shall default in any of its covenants, obligations and undertakings as set forth in the Board Lease, and shall fail to cure said default within the time, if any, permitted by said Board Lease, as applicable, for the cure thereof; or

5.7 Nonperformance of Covenants. If there shall occur any other default in the covenants, warranties, agreements, liabilities, obligations and undertakings of Grantor or Borrower as contained in this Deed of Trust, the Leasehold Deed of Trust or any other Loan Document (including, without limitation, any "Event or Default" as defined in the Loan Agreement), or contained in any other instrument which now or hereafter secures the Obligations, if such default is not cured within a period of thirty (30) days following written notice thereof by the Beneficiary to Borrower, or if there is another cure period specifically applicable to such default, within such applicable cure period.

ARTICLE VI REMEDIES

If an Event of Default shall occur, Beneficiary may exercise any one or more of the following remedies:

6.1 Acceleration. Beneficiary may declare the entire Obligations, principal and interest, immediately due and payable without notice or demand, the same being hereby expressly waived.

6.2 Enforcement of Assignment of Rents and Leases. Beneficiary may:

(a) terminate the license granted to Grantor to collect the Rents (regardless of whether Beneficiary or Trustee shall have entered into possession of the Mortgaged Property), collect and sue for the Rents in Beneficiary's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees, apply the net proceeds thereof to any Obligations as Beneficiary may elect;

(b) make, modify, enforce, cancel or accept surrender of any Leases, evict tenants, adjust Rents, maintain, decorate, refurbish, repair, clean, and make space ready for renting, and otherwise do anything Beneficiary reasonably deems advisable in connection with the Mortgaged Property; and

(c) apply the Rents so collected to the operation and management of the Mortgaged Property, including the payment of reasonable management, brokerage and attorneys' fees, or to the Obligations.

6.3 Power of Sale. Beneficiary may require the Trustee, and the Trustee is hereby authorized and empowered, to enter and take possession of the Mortgaged Property and to sell all or part of the Mortgaged Property, at public auction, to the highest bidder for cash, free from equity of redemption, and any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, after giving notice of the time, place and terms of such sale and of the Mortgaged Property to be sold, by advertising the sale of the property for twenty-one (21) days by three (3) weekly notices in some newspaper published in the county and state where the Mortgaged Property is situated, which notice may be given before or after entry by the Trustee. The Trustee shall execute a conveyance to the purchaser in fee simple and deliver possession to the purchaser, which the Grantor warrants shall be given without obstruction, hindrance or delay. The Trustee may sell all or any portion of the Mortgaged Property, together or in lots or parcels, and may execute and deliver to the purchaser or purchasers of such property a conveyance in fee simple. The Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (a) first, the payment of the expenses of making, maintaining and executing this trust, protection of the Mortgaged Property, including the expense of any litigation and reasonable attorneys' fees, and reasonable compensation to the Trustee; (b) second, to any advancements made by the Trustee or the Beneficiary pursuant hereto, with interest thereon; (c) third, to the payment of the Obligations herein secured or intended so to be, in such order as Beneficiary shall elect, and any balance of said Obligations may be the subject of immediate suit against any party personally liable therefor; and (d) fourth, should there be any surplus, Trustee will pay it to the Grantor, or to such person as may be legally entitled thereto. The sale or sales by Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of the Mortgaged Property shall be less than the aggregate of the Obligations and the expenses thereof, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property; provided, however, that Grantor shall never have any right to require the sale or

sales of less than the whole of the Mortgaged Property, but Beneficiary shall have the right at its sole election, to request the Trustee to sell less than the whole of the Mortgaged Property. Beneficiary may bid and become the purchaser of all or any part of the Mortgaged Property at any such sale, and the amount of Beneficiary's successful bid may be credited on the Obligations.

6.4 Sale of Personal Property. At the request of the Beneficiary the Trustee shall sell the Personal Property concurrently with and in conjunction with a sale of the Mortgaged Property, in which case the provisions of the preceding Section shall apply to the Personal Property as well as the Mortgaged Property. Grantor stipulates and agrees that a sale of the Personal Property in conjunction with the Mortgaged Property is a commercially reasonable manner of disposing of the Personal Property. Alternatively, Beneficiary may sell or otherwise dispose of the Personal Property separately and apart from the Mortgaged Property in the time and manner provided by the Code. To the extent that the Code shall require prior notice of sale or other disposition of the Personal Property, five (5) days' written notice shall be deemed to be reasonable notice. Beneficiary also may (a) require the Borrower to assemble all or part of the Personal Property as directed by Beneficiary and make it available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to the parties; and (b) sell the Personal Property or any part thereof in one or more parcels at public or private sale for cash or credit or for future delivery, and at such price or prices and upon such other terms as Beneficiary may deem commercially reasonable. Beneficiary shall not be obligated to make any sale of the Personal Property regardless of notice of sale having been given. Beneficiary may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

6.5 Entry on Mortgaged Property; Tenancy at Will.

(a) Beneficiary may enter into and upon and take possession of all or any part of the Mortgaged Property, and may exclude Grantor, and all persons claiming under Grantor, and its agents or servants, wholly or partly therefrom; and, holding the same, Beneficiary may use, administer, manage, operate, and control the Mortgaged Property and may exercise all rights and powers of Grantor in the name, place and stead of Grantor, or otherwise, as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

(b) In the event of a trustee's or other foreclosure sale hereunder and if at the time of such sale Grantor or any other party (other than a tenant under a Lease as to which the Beneficiary shall have expressly subordinated the lien of this Deed of Trust as hereinabove set out) occupies the portion of the Mortgaged Property so sold or any part thereof, such occupant shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of such purchaser, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied (but not less than any rental theretofore paid by such tenant, computed on a daily basis). An action of forcible detainer shall lie if any such tenant holds over after a demand in writing for possession of such portion of the Mortgaged Property.

6.6 Receiver. Beneficiary may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Obligations, for appointment of a receiver of the Mortgaged Property, and Grantor does hereby irrevocably consent to such appointment. Any such receiver shall have all necessary and proper powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court.

6.7 Beneficiary's Right to Perform. Upon the failure of Borrower or Grantor to make a payment or perform an act required by the Loan Documents, then at any time thereafter, and without notice to or demand upon Grantor and without waiving or releasing any other right, remedy or recourse, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Grantor and/or Borrower, and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action as Beneficiary may deem necessary or appropriate.

6.8 Remedies Cumulative, Concurrent and Nonexclusive. If the Obligations are now or hereafter further secured by chattel mortgages, deeds of trust, security agreements, pledges, contracts of guaranty, assignments of leases, or other security, Beneficiary may, at its option, exhaust its remedies under any one or more of said instruments and this Deed of Trust, either concurrently or independently, and in such order as Beneficiary may determine. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available to it at law or equity (including, without limitation, those granted by the Code), and same (a) shall be cumulative, concurrent, and nonexclusive, (b) may be pursued separately, successively or concurrently against Grantor or others obligated for the Obligations, or any part thereof or against any one or more of them, or against the Mortgaged Property or the Personal Property, at the sole discretion of Beneficiary, and (c) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise of or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse.

6.9 Grantor's Limitation of Liability. Notwithstanding any of the covenants and conditions contained in this Deed of Trust, as respects the obligations of the Grantor, the exclusive and sole remedy of the Beneficiary and any transferee or endorsee after transfer or endorsement or assignment of this Deed of Trust or of any other Loan Document for an Event of Default shall be foreclosure under this Deed of Trust, and the exercise of the rights granted by the assignor to the Beneficiary in any assignments of rents, leases or profits to such Beneficiary, including the right of enforcement of any such leases or subleases as assigned, or by the guarantor in any guaranty agreement. In the event of foreclosure or the exercise of any rights by the Beneficiary, no deficiency or other personal judgment, nor any order or decree of specific performance nor any recovery or remedy of any kind, shall be sought or rendered against Grantor, or its successors and assigns, (including any incorporator, member, director, officer, employee, counsel or agent of Grantor, their heirs, personal representatives, transferees, successors or assigns, as the case may be). Further, the Beneficiary, by acceptance hereof, acknowledges that as regards the Grantor (including any incorporator, member, director, officer, employee, counsel or agent thereof), it has not relied upon, nor will it in the future rely upon, any warranty, representation or statement by Grantor or its incorporators, members, officers, directors, employees, counsel or agents concerning Borrower's financial condition or affairs or any other matter concerning Borrower. The provisions of this paragraph shall not limit or impair the rights of the Beneficiary as regards the Borrower or any guarantor or endorser of the Obligations, all of whom shall at all times continue to be personally liable for the payment and performance of the Obligations. Nothing contained in this Deed of Trust shall constitute a waiver or otherwise impair Grantor's right to indemnification and reimbursement under the Board Lease or any other right of Grantor under the Board Lease. Notwithstanding the foregoing provisions in this Deed of Trust, nothing hereinabove stated shall in any way prevent or hinder the Beneficiary in the enforcement of foreclosure of the liens, deeds of trust, assignments, rights, and security interests now or at anytime hereafter securing the Loan Documents against the Mortgaged Property or other parties but not against Grantor or its successors and assigns, (including any incorporator, member, director, officer, employee, counsel or agent of Grantor, their heirs, personal representatives, transferees, successors or assigns, as the case may be). Grantor shall not be obligated to take any action or execute any instrument pursuant to any provisions hereof, or any Loan Document until it shall have been requested to do so by the Borrower or the Beneficiary and shall have received from the Borrower or the Beneficiary assurance satisfactory to the Grantor that the Grantor shall be reimbursed for its reasonable expenses incurred or to be incurred and indemnified against all losses and expenses in connection with the taking of such action or executing such

action or executing such document on terms satisfactory to Grantor, and no action shall be taken by Grantor except in its sole discretion.

Grantor, its successors and assigns (including any incorporator, member, director, officer, employee, counsel or agent and their heirs, personal representatives, transferees, successors or assigns, as the case may be), shall have no personal liability for any representation, warranty, covenant or agreement contained herein and is fully exculpated therefrom by Beneficiary, Trustee and Borrower.

ARTICLE VII TRUSTEE

7.1 Employment of Agents. The Trustee, or any one acting in its stead, shall have, in its discretion, authority to employ all proper agents and attorneys in the execution of this trust and/or in the conducting of any sale made pursuant to the terms hereof, and to pay for such services rendered out of the proceeds of the sale of the Mortgaged Property, should any be realized. Trustee may rely on any document believed by it in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon.

7.2 Indemnification of Trustee. If the Trustee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Property or the title thereto, or the interest of the Trustee or Beneficiary under this Deed of Trust, the Trustee and Beneficiary shall be reimbursed by Grantor (to the extent that the Mortgaged Property shall be available to pay same), immediately and without demand, for all reasonable costs, charges and attorney's fees incurred by them or either of them in any such case, and the same shall be secured hereby as a further charge and lien upon the Property.

7.3 Successor Trustee. In the event of the death, refusal, or of inability for any cause, on the part of the Trustee named herein, or of any successor trustee, to act at any time when action under the foregoing powers and trust may be required, or for any other reason satisfactory to the Beneficiary, the Beneficiary is authorized, either in its own name or through an attorney or attorneys in fact appointed for that purpose, by written instrument duly registered, to name and appoint a successor or successors to execute this trust, such appointment to be evidenced by writing, duly acknowledged; and when such writing shall have been registered, the substituted trustee named therein shall thereupon be vested with all the right and title, and clothed with all the power of the Trustee named herein and such like power of substitution shall continue so long as any part of the debt secured hereby remains unpaid.

ARTICLE VIII MISCELLANEOUS

8.1 Waiver of Marshalling and Certain Rights. To the extent that Grantor may lawfully do so, Grantor hereby expressly waives any right pertaining to the marshalling of assets or marshalling of liens, the equity of redemption, any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, or other matter which might defeat, reduce or affect the right of Beneficiary to sell the Mortgaged Property or the Personal Property for the collection of the Obligations, or the right of Beneficiary to the payment of the Obligations out of the proceeds of sale of the Mortgaged Property or the Personal Property, or the proceeds of the Rents and Leases, in preference to every other person and claimant.

8.2 Waiver of Impairment of Recourse Defenses. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for the payment or performance of any of the Obligations, and without affecting the rights of Beneficiary with respect to any security not

expressly released in writing, Beneficiary may, at any time, and from time to time, either before or after the maturity of the Note, and without notice or consent:

- (a) Release any person liable for payment or performance of all or any part of the Obligations;
- (b) Make any agreement extending the time or otherwise altering the terms of payment or of all or any part of the Obligations (without limit as to the number of such extensions or the period or periods thereof), or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;
- (c) Exercise or refrain from exercising any right Beneficiary may have;
- (d) Accept additional security of any kind;
- (e) Release or otherwise deal with any property, real or personal, securing the Obligations, including all or any part of the Mortgaged Property herein described.

Furthermore, the failure of the Beneficiary to perfect any lien granted herein or in any other Loan Document, to take any action to obtain payment or performance of the Obligations or to exercise any rights or remedies available hereunder shall not relieve Grantor or any other person from liability for the payment or performance of the Obligations nor effect a discharge of the lien, security interest or assignment herein granted; it being intended that all "impairment of recourse" and "impairment of collateral" defenses are hereby waived.

8.3 No Waiver. No waiver by the Trustee or the Beneficiary shall be construed as a waiver of a subsequent similar default or any other default by the Grantor or Borrower. No delay by Beneficiary or by the Trustee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder. No failure of Beneficiary to exercise any option herein given to declare the maturity of the debt hereby secured, no forbearance by Beneficiary after the exercise of such option, and no withdrawal or abandonment of foreclosure proceedings by the Beneficiary after the exercise of such option, shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present, or future default on the part of the Grantor. Acceptance by Beneficiary of partial payments shall not constitute a waiver of the default by failure to make full payments.

8.4 Beneficiary's Consent. Except as otherwise expressly provided herein, in any instance hereunder where Beneficiary's approval or consent is required or the exercise of Beneficiary's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Beneficiary, and Beneficiary shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment. Beneficiary may consult with counsel, and the written advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

8.5 Default Rate. If Beneficiary shall expend any money chargeable to Grantor or Borrower or subject to reimbursement by Grantor or Borrower under the terms of this Deed of Trust or any of the other Loan Documents, it shall be the Borrower's obligation to repay the same to Beneficiary immediately at the place where payments under the Note are payable, together with interest thereon from the date due (or, if there is no specified due date, from the date of demand therefor by Beneficiary) until paid at a rate (herein the "Default Rate") equal to the lesser of (a) twenty percent (20%) per annum, or (b) the maximum effective contract rate of interest allowed by applicable law.

8.6 Subrogation. To the extent that proceeds of the Obligations are used to pay any outstanding lien, charge or encumbrance affecting the Mortgaged Property (including, without limiting the generality of the foregoing, any Prior Lien) Beneficiary shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record; provided, however, that the terms and provisions hereof shall govern the rights and remedies of Beneficiary and, to the extent permitted by law without impairing any of Beneficiary's rights of subrogation, shall supersede the terms, provisions, rights, and remedies under the lien or liens to which Beneficiary is subrogated hereunder.

8.7 Payment in Full. If the said Grantor or Borrower shall pay and perform all of the Obligations promptly when due, and shall pay such sums as shall be necessary to discharge taxes and maintain insurance and perform repairs and the costs, fees and expenses of making, enforcing and executing this trust, when they shall severally be due and payable, and shall comply with all of the covenants, terms and conditions of the Note, the Loan Agreement, and this Deed of Trust, and any other instrument which also now or hereafter secures the Obligations secured hereby, then this conveyance shall become void, the Trustee shall reconvey by quitclaim the Mortgaged Property herein described at the expense of the Borrower, and the Beneficiary shall execute and deliver to Grantor, at Grantor's request, such documents as may be necessary to evidence the termination of the security interests and assignments herein granted.

8.8 No Partnership. Nothing contained in this Deed of Trust is intended to create any partnership, joint venture or association between Grantor and Beneficiary, or in any way make Beneficiary a co-principal with Grantor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

8.9 Headings, Use of Terms. The article, paragraph and subparagraph headings hereof are inserted for convenience of reference only and shall not alter, define, or be used in construing the text of such articles, paragraphs or subparagraphs. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders. The term "Grantor" shall include in their individual capacities and jointly all parties hereinabove named a Grantor. The term "Beneficiary" shall include any lawful owner, holder, pledgee, or assignee of any of the Obligations. The duties, covenants, conditions, obligations, and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and each Grantor, if more than one, and each Grantor's heirs, personal representatives, successors and assigns.

8.10 Severability. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective while this Deed of Trust is in effect, the legality, validity and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Deed of Trust a provision that is legal, valid and enforceable and as similar in terms to such illegal, invalid or unenforceable provision as may be possible. If any of the Obligations shall be unsecured, the unsecured portion of the Obligations shall be completely paid prior to the payment of the secured portion of such Obligations, and all payments made on account of the Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligations.

8.11 Burden and Benefit. This instrument shall be binding on Grantor and Grantor's successors and assigns, and shall inure to the benefit of the Beneficiary and Trustee and their respective successors and assigns.

8.12 Applicable Law. This Deed of Trust shall be governed by and construed in accordance with the internal laws of the State of Tennessee without regard to principles of conflicts of laws.

8.13 Binding Arbitration.

(a) AS DETAILED IN THE FOLLOWING PARAGRAPHS, UNDER THIS PROVISION, BENEFICIARY, GRANTOR AND BORROWER EXPRESSLY WAIVE RIGHTS TO PURSUE OR RESOLVE DISPUTES BETWEEN THEM IN COURT OR IN A CLASS ACTION (REGARDLESS OF WHETHER THAT CLASS ACTION IS BROUGHT IN COURT OR IN ARBITRATION).

(b) DISPUTES, CLAIMS, OR CONTROVERSIES (HEREINAFTER "DISPUTES") BETWEEN OR AMONG THE PARTIES TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION. DISPUTES SHALL INCLUDE ALL CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS, THIRD PARTY CLAIMS, INTERPLEADERS, OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND/OR ANY ACTION TAKEN (OR ANY OMISSION TO TAKE ANY ACTION) IN CONNECTION WITH THE FOREGOING. DISPUTES SHALL BE SUBJECT TO BINDING ARBITRATION REGARDLESS OF THE NATURE OF THE CAUSES OF ACTION ASSERTED OR THE RELIEF OR REMEDY SOUGHT. DISPUTES HEREUNDER INCLUDE NOT ONLY DISPUTES THAT BENEFICIARY, BORROWER AND/OR GRANTOR MAY HAVE AGAINST EACH OTHER, BUT ALSO DISPUTES THAT BENEFICIARY, BORROWER AND/OR GRANTOR MAY HAVE AGAINST EACH OTHER'S AFFILIATES, PREDECESSORS, SUCCESSORS, ASSIGNS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES.

(c) BENEFICIARY, BORROWER AND GRANTOR AGREE THAT ARBITRATION REPLACES THE RIGHT TO GO TO COURT, AND THUS THE PARTIES WAIVE ANY RIGHT TO HAVE DISPUTES TRIED BEFORE A JUDGE OR A JURY.

(d) BENEFICIARY, BORROWER AND GRANTOR ALSO AGREE THAT NO PARTY WILL BE ABLE TO PURSUE DISPUTES AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION (SUCH AS AN ACTION IN THE FORM OF A PRIVATE ATTORNEY GENERAL) IN COURT OR IN ARBITRATION, AND THE PARTIES WAIVE THE RIGHT TO DO SO. IF THE PRECEDING SENTENCE IS HELD TO BE INVALID BY A COURT OF LAW, THEN ANY CLASS OR REPRESENTATIVE ACTION WILL NOT BE RESOLVED THROUGH ARBITRATION AND WILL BE RESOLVED IN COURT.

(e) Because this arbitration provision is made pursuant to transactions involving interstate commerce, the parties acknowledge and agree that it shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, as the same may be amended from time to time.

(f) The party pursuing Disputes in arbitration must pursue the Disputes before the American Arbitration Association ("AAA") under the AAA Commercial Finance rules (the "Commercial Finance Rules"). The Commercial Finance Rules and related forms may be obtained from and Disputes may be filed at American Arbitration Association, 335 Madison Avenue, Floor 10, New York, New York 10017-4605, 800-778-7879, www.adr.org. Any arbitration hearing shall be held at a place chosen by the arbitrator(s) or AAA within the federal district in which Borrower's principal place of business is located, or at some other place to which Beneficiary, Borrower and Grantor agree in writing. Judgment upon any arbitration award may be entered in any court having jurisdiction.

(g) In arbitration, resolution of Disputes shall be based solely upon the law of the State of Tennessee and, where applicable, the United States. The arbitrator or arbitrators may not add to, modify, invalidate, or ignore any provision of this agreement or the controlling law. Defenses based on statutes of limitation, estoppel, waiver, laches and similar doctrines, that would otherwise be applicable to

an action brought by a party, shall be applicable in any such arbitration proceeding. In the event of any conflict between the Commercial Finance Rules and this arbitration provision, the terms of this arbitration provision control.

(h) This arbitration provision shall survive termination of this Agreement. If any portion of this provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force.

1.2 WAIVER OF JURY TRIAL. IN THE EVENT THAT THE FOREGOING BINDING ARBITRATION PROVISION IS DEEMED UNENFORCEABLE, AND THUS BENEFICIARY, BORROWER AND/OR GRANTOR ARE REQUIRED TO LITIGATE IN COURT, BENEFICIARY, BORROWER AND GRANTOR HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES, WHETHER ARISING OUT OF OR RELATING TO THIS AGREEMENT BROUGHT BY EITHER PARTY AGAINST THE OTHER.

[The rest of this page intentionally left blank]

IN WITNESS WHEREOF, Grantor has caused this Indenture to be executed by its duly authorized officers on this the day and year first above written.

GRANTOR:

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

By:

Name:

Title:

Hicks Armor

Chairman

STATE OF TENNESSEE

COUNTY OF Hamilton

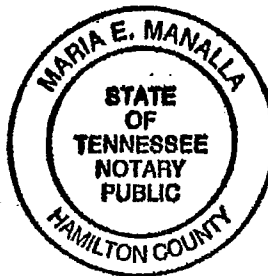
Before me, a Notary Public in and for the State and County aforesaid, personally appeared Hicks Armor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be the Chairman of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, a Tennessee public corporation, the within named grantor, and that s/he as such Chairman being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by him/herself as such Chairman.

WITNESS my hand and seal at office, on this the 24th day of February, 2016.

Maria Manallo
Notary Public

My Commission Expires:

5/27/18



LESSEE:

HERITAGE – MACLELLAN APARTMENTS, LLC,
a Delaware limited liability company

By: 

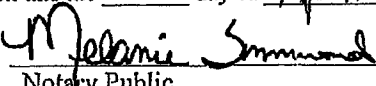
Name: William M. Yandell, III

Title: President

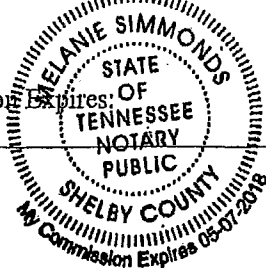
STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for the State and County aforesaid, personally appeared William M. Yandell, III, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Heritage – Maclellan Apartments, LLC, a Delaware limited liability company registered to do business in the State of Tennessee, the within named bargainer, and that he as such President being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as such President.

WITNESS my hand and seal at office, on this the 6th day of April, 2016.


Notary Public

My Commission Expires:



Subordination of Lease

17

EXHIBIT "A"
TO TENNESSEE FEE CONSTRUCTION DEED OF TRUST
WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES

Land situated in Hamilton County, Tennessee:

Being a part of Lots Fifty-two (52) and Fifty-four (54), Original Town, City of Chattanooga, and being more particularly described according to plat of survey prepared by Betts Engineering Associates, Inc., drawing no. 3492-365-205, as follows:

To locate the point of beginning, begin at the intersection of the West line of Broad Street with the North line of East Eighth Street and then go North 00 degrees 02 minutes 00 seconds West, with and along the West line of Broad Street, 137 feet to the point of beginning which is located in the North line of an alley; thence North 89 degrees 58 minutes 05 seconds West, with and along said North line of said alley, 99.11 feet; thence South 00 degrees 03 minutes East 0.73 feet; thence South 88 degrees 48 minutes 00 seconds West 27.11 feet; thence South 00 degrees 03 minutes West 11.31 feet to the North face of the building located on the property conveyed to Blue Cross and Blue Shield of Tennessee, a Tennessee Corporation, by Deed of record in Book 2364, Page 407, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 59 minutes 54 seconds West, with and along said building North face, 110 feet to a point in the East line of Chestnut Street; thence North 00 degrees 07 minutes East, with and along the East line of Chestnut Street, 84.94 feet in a point on the South face of the South wall of the Tivoli Theatre (being the property conveyed to the City of Chattanooga, Tennessee by Deed of record in Book 2304, Page 743, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 57 minutes 47 seconds East, with and along the South face of the South wall of the Tivoli Theatre 118.09 feet, to a point where the South face of the South wall of the Tivoli Theatre turns and runs in a Northeastwardly direction; thence North 50 degrees 19 minutes 19 seconds East, with and along the Southeast face of the Southeast wall of the Tivoli Theatre, 15.62 feet to a point where the Southeast face of the Southeast wall of the Tivoli Theatre turns and runs in a Northwardly direction; thence North 00 degrees 07 minutes 01 seconds West, with and along the East face of the East wall of the Tivoli Theatre, 40.86 feet, to a point where the East face of the East wall of the Tivoli Theatre turns and runs in an Eastwardly direction; thence South 89 degrees 57 minutes 11 seconds East, with and along the South face of the South wall of the Tivoli Theatre, 105.95 feet, to a point in the West line of Broad Street; thence South 00 degrees 02 minutes East, with and along the West line of Broad Street, 123.21 feet to the point of beginning.

For prior title see deed in
Book 10719 Page 689

EXHIBIT "B"
TO TENNESSEE FEE CONSTRUCTION DEED OF TRUST
WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES

All personal property now or at any time hereafter located upon, related to the use of, or intended to be used in connection with the real property described in Exhibit "B," in which the Grantor presently has an interest or acquires an interest in the future including, but not limited to, the following:

- (a) All heating, plumbing, lighting, water heating, incinerating, ventilating, and air-conditioning equipment, shades, awnings, blinds, linoleums, rugs and carpeting, signs, elevators, and all other machinery, tools, equipment, and fixtures;
- (b) All headboards, mattresses, box springs, nightstands, mirrors, bed frames, party tables, game chairs, tables, chairs, dressers, dresser lamps, nightstand lamps, hang lamps, lamps, pictures, picture frames, end tables, bunching tables, sofas, lounge chairs;
- (c) All conference-style tables, blackboards, credenzas, banquet chairs, movie screens, projectors, podiums, long banquet tables, round top pedestal tables, easels, and all other furniture and furnishings;
- (d) All filing cabinets, executive-type chairs, side chairs, executive desks, secretarial desks, calculators, addressographs, adding machines, electric pencil sharpeners, emergency medical equipment, safes, coat racks, typewriters, paper cutters, cash registers;
- (e) All refrigerators, microwave ovens, ovens, stoves, ranges, burners, broilers, fryers, mixers, tenderizers, food warmers, plate warmers, food slicers, chain saws, buffet servers, food caddies, freezers, toasters, roll warmers, milk dispensers, ice makers, ice cream makers, food choppers, coffee makers, steamers, chafers, dishwashers, glass warmers, disposals, stainless steel ware, cutlery, silverware, glassware, brushes, mops, brooms, and all other appliances and hardware;
- (f) All tables, carousels, chandeliers, wall hangings, draperies, side stands, dividers, bus stands, hostess stands, pictures, coat stands, booths, booth seats, flaming carts, sofas, chairs, mirrored side stands, china, silverware, glassware, ashtrays, salt and pepper shakers, pots, pans, grills;
- (g) All bar materials, blenders, mixed drink glasses, bar stools, tables, chairs, sofas, lounge chairs, small refrigerators, cash registers;
- (h) All sheets, towels, linens, paper goods, cleaning products, toiletries and all other supplies and inventory;
- (i) All artificial plants, real plants, pianos, stage lights, spot lights, signs, sound equipment, turn tables, speakers, light control boards, hot plates, trash cans, garbage cans, clothes washers, dryers, air compressors, sheet folders, towel folders, urns, clocks;
- (j) All telephones, telephone equipment, television sets and related equipment, computers, computer software and systems (provided that, if and to the extent that Grantor shall lease any such equipment, as permitted by Beneficiary, the security interest therein shall consist of Grantor's rights under such leases);

(k) And all other personal property, of every kind and nature, movable or immovable, and all parts thereof and replacements, additions, and accessions thereto, now or at any time hereafter located upon or intended to be used in connection with the real property (the "premises") described in Exhibit "A," attached hereto hereinabove and incorporated herein by reference as fully as if set out herein verbatim;

(l) All building materials now or hereafter located on said real property, prior to incorporation of said building materials in the improvements on said premises;

(m) All plans and specifications related to the property and any and all improvements now existing or hereafter to be constructed on the property;

(n) All rents, incomes, profits, revenues, royalties, bonuses, rights, accounts, contract rights, general intangibles, and benefits under any and all leases or tenancies now existing or hereafter created of said premises, any improvements thereon, or any part thereof;

(o) All leases, subleases and other rental arrangements (however denominated, and including, without limitation, arrangements for the rental of rooms) covering the premises or any portion thereof now or hereafter existing or entered into, and all rights and interests thereunder, including, without limitation, all cash or security deposits, advance rentals, guarantees and deposits of similar nature;

(p) All judgments, awards of damages and settlements hereafter made as a result of or in lieu of any taking of said premises and improvements or any part thereof or interest therein under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to said premises or the improvements thereon or any part thereof or interest therein, including any award for change of grade of streets;

(q) All proceeds of hazard or other insurance policies maintained with respect to any Collateral described above or with respect to the improvements now or hereafter located on said premises (whether or not Beneficiary is loss payee thereof);

(r) All contract rights, general intangibles, and benefits under any servicing or franchise agreements now existing or hereafter entered into concerning or related to the use, operation or management of the premises or the improvements;

(s) All proceeds of any and all of the foregoing collateral. Although proceeds are covered, Beneficiary does not authorize the sale or other transfer of any of the collateral or the transfer of any interest in the collateral;

(t) All ledgers, books of account and records of the Debtor (Grantor) relating to any of the collateral described in paragraphs (a) through (i);

in each case, whether now owned or hereafter acquired by the Debtor (Grantor) and howsoever the interest of Debtor (Grantor) therein may arise or appear (whether by ownership, lease security interest, claim, or otherwise).

NAME OF RECORD OWNER OF REAL PROPERTY DESCRIBED IN EXHIBIT "A":

HERITAGE-MACLELLAN APARTMENTS, LLC

This Instrument Prepared By:
Phillip A. Noblett, Deputy City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

Book/Page: **GI 10719 / 693**
Instrument: 2016041800166
17 Page LEASE
Recorded by KML on 4/18/2016 at 11:50 AM
MISC RECORDING FEE 85.00
DATA PROCESSING FEE 2.00
TOTAL FEES \$87.00
State of Tennessee Hamilton County Register of Deeds **PAM HURST**

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered as of this 6 day of ^{April} ~~March~~, 2016, by and between **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE** (the "Board"), a public corporation duly created and existing under the laws of the State of Tennessee, and **HERITAGE - MACLELLAN APARTMENTS, LLC** (the "Company"), a Delaware limited liability company.

WITNESSETH:

In consideration of the respective covenants and agreements hereinafter contained, the Board and the Company agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.01. Definitions. The following terms when used in this Agreement, unless the context shall clearly indicate another or different meaning or intent, shall be construed as follows:

"Act" means Chapter 333 of the Public Acts of 1969, as codified in Tennessee Code Annotated Sections 48-101-301 et seq., as heretofore amended and as hereafter amended from time to time.

"Act of Bankruptcy" means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceeding) by or against the Company or the Board under any applicable bankruptcy, insolvency or similar law as now or hereafter in effect.

"Agreement" means this Lease Agreement as it now exists and as it may hereafter be amended.

"Board" means The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, a public corporation duly created and existing under the Act, and its successors and assigns.

"City" means the City of Chattanooga, Tennessee.

"County" means Hamilton County, Tennessee.

The terms "default" and "event of default" mean any occurrence or event specified in Section 10.01 hereof.

FEDEX CHRISTINA ANDERSON
6060 POPLAR AVE
STE LL-37
MEMPHIS TN, 38119



10719 710

The term "pending" with respect to any proceedings commenced by an Act of Bankruptcy means that such proceedings have not been dismissed, or are subject to further appeal.

"PILOT Agreement" means the Agreement for Payments in Lieu of Ad Valorem Taxes entered into by and among the Board, the Company, the City and the County.

"Project" means the multi-family rental housing project located on the Property.

"Property" means the real and personal property described in **Exhibit "A"** attached hereto, together with additions thereto, replacements thereof and substitutions therefor.

ARTICLE II.

CERTIFICATIONS

Section 2.01. Certifications by Board. The Board makes the following certifications as the basis for the undertakings on its part herein contained:

(a) The Board is a public corporation of the State of Tennessee, duly organized and existing under the provisions of the Act. The Act authorizes the Board to acquire real and personal property constituting a "Project" under the Act.

(b) The Board has found and does hereby declare that the Project constitutes "multi-family housing facilities" qualifying as a "Project" under the Act and that the acquisition of the Project and the leasing of the same to the Company will be in furtherance of the public purposes for which the Board was created.

(c) The Board has been induced to enter into this undertaking by the promise of the Company to operate a housing facility in the State of Tennessee.

(d) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Board threatened, against or affecting the Board in any court or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially and adversely affecting the transactions contemplated by this Agreement or which, in any way, would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument to which the Board is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.

Section 2.02. Certifications by Company. The Company makes the following certifications as the basis for the undertakings on its part herein contained:

(a) The Company is limited liability company duly formed under the laws of the State of Delaware, is in good standing under Tennessee law, has full power and authority to enter into this Agreement and to perform all obligations contained herein and therein, and has, by proper action, been duly authorized to execute and deliver this Agreement and, when executed and delivered by the parties thereto, this Agreement will constitute the valid and binding obligation of the Company enforceable in accordance with its terms.

(b) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated herein by the Company, nor the fulfillment of or compliance with the terms and conditions of this Agreement, does or will conflict with or result in a breach of the terms, conditions or provisions of any restriction or internal governing document of the Company or any agreement or instrument to which the Company is now a party or by which it is bound, or any existing law, rule, regulation, judgment, order or decree to which it is subject, or constitutes a default under any of the foregoing or, except as contemplated hereby, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement.

(c) There are no proceedings pending, or to the knowledge of the Company threatened, against or affecting the Company in any court or before any governmental authority, arbitration board or tribunal which involve the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of the Company, or the ability of the Company to perform its obligations under this Agreement. The Company is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(d) No event has occurred and no condition exists with respect to the Company that would constitute an "event of default" under this Agreement, or which, with the lapse of time or with the giving of notice, or both, would become such an "event of default."

ARTICLE III.

LEASING CLAUSES; WARRANTY OF TITLE

Section 3.01. Lease of Property. The Board hereby leases to the Company, and the Company hereby leases from the Board, the Property, for the consideration set forth in Section 5.03 hereof and in accordance with the provisions of this Agreement.

Section 3.02. Title. The Board will obtain upon the acquisition thereof good and marketable title to the Property, free from all encumbrances.

Section 3.03. Quiet Enjoyment. The Board covenants and agrees that it will warrant and defend the Company in the quiet enjoyment and peaceable possession of the Property, free from all claims of all persons whatsoever, throughout the Lease Term, so long as the Company shall perform the covenants, conditions and agreements to be performed by it hereunder, or so long as the period for remedying any default in such performance shall not have expired. If the Board shall at any time be called upon to defend the title to said property as aforesaid, it shall not be required to incur any costs or expenses in connection therewith unless indemnified to its satisfaction against all such costs and expenses.

ARTICLE IV.

ACQUISITION, CONSTRUCTION AND INSTALLATION OF PROPERTY

Section 4.01. Agreement to Acquire, Construct and Install Project. The Company agrees that:

- (a) It will cause title in and to the Property to be vested in the Board.
- (b) It will acquire, construct and install the Project in the name of and on behalf of the Board.
- (c) It will complete the acquisition, construction and equipping of the Project as promptly as practicable.

ARTICLE V.

EFFECTIVE DATE; DURATION OF LEASE TERM; CONSIDERATION

Section 5.01. Effective Date of this Agreement; Duration of Lease Term. This Agreement shall become effective upon its delivery, and the leasehold estate created hereunder shall then begin, and, subject to the other provisions of this Agreement, shall expire at midnight, December 31, 2034.

Section 5.02. Delivery and Acceptance of Possession. The Board agrees to deliver to the Company sole and exclusive possession of the Project, and the Company agrees to accept possession of the Project upon such delivery.

Section 5.03. Consideration for Lease. In consideration of the lease granted hereunder the Company agrees to:

- (a) Acquire, construct and install the Project as described in Section 4.01 hereof;
- (b) Operate the Project as a multi-family housing facility for its own benefit and for the benefit of the citizens of the County and the City; and
- (c) Make the payments required of it under the PILOT Agreement.

ARTICLE VI.

MAINTENANCE; MODIFICATION; TAXES AND INSURANCE

Section 6.01. Maintenance and Modification of Property by Company. The Company agrees that throughout the term of this Agreement it will, at its own expense, keep the Property (i) in as reasonably safe condition as its operations shall permit, and (ii) in good repair and in good operating condition, normal wear and tear and obsolescence excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.

Section 6.02. Removal of Personal Property Included in Project. The Board shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary personal property constituting a part of the Project. In any instance where the Company in its sole discretion determines that any items of such personal property have become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Company may remove such items of personal property and (on behalf of the Board) sell, trade-

in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the Board therefor.

Section 6.03. Taxes, Other Governmental Charges and Utility Charges. The Board and the Company acknowledge that under present law the Project will be exempt from taxation in the State of Tennessee. The Company will pay, as the same become lawfully due and payable, (i) all taxes and governmental charges of any kind whatsoever upon or with respect to the Project and (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project.

The Company may, at its own expense and in its own name, in good faith contest any such taxes, assessments or other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. The Board will cooperate fully with the Company in any such contest.

Section 6.04. Maintenance of Insurance. Throughout the term of this Agreement, the Company shall keep the Property continuously insured against such risks as are customarily insured against with respect to property similar to the Property by businesses of like size and type (other than business interruption insurance), paying as the same become due all premiums in respect thereto.

Section 6.05. Indemnification of Board. The Company shall and hereby agrees to indemnify and save the Board and its officers, directors, agents, servants and employees harmless from and against all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Property during the term of this Agreement, and against and from all claims arising during the term of this Agreement, from

- (a) any condition of the Property caused by the Company;
- (b) any breach or default on the part of the Company in the performance of any its obligations under this Agreement; and
- (c) any act of negligence of the Company or of any agents, contractors, servants, employees or licensees of the Company or of any assignee or sublessee of the Company.

The Company shall indemnify and save the Board and its officers, directors, agents, servants and employees harmless from and against all costs and expenses incurred in or in connection with any action or proceeding brought thereon, and, upon notice from the Board, the Company shall defend the Board and any such officer, director, agent, servant or employee or any of them in any such action or proceeding.

Section 6.06. Board Expenses. In addition to other payments required to be made by the Company hereunder, the Company shall pay any reasonable expenses not specifically mentioned herein which are incurred by the Board in connection with the Property or this Agreement.

Section 6.07. Depreciation and Investment Credit. The Board covenants and agrees that depreciation expenses and investment tax credit, if any, with respect to the Project shall be made available to the Company, and the Board will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation expenses or investment tax credit, but the Board shall have no responsibility or liability for failure of the Company to receive any such expenses or credits.

ARTICLE VII.

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.01. Damage and Destruction. If during the term hereof the Property is damaged by fire or other casualty, the Board shall cause the proceeds received by it from insurance to be paid to the Company for application in one or both of the following ways, as shall be determined by the Company:

- (a) Repair, rebuilding or restoration of the property damaged.
- (b) Reimbursement to the Company for loss in value of its interest in the Property.

Section 7.02. Condemnation of Property. If title in and to, or the temporary use of, the Property or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Board shall cause the proceeds received by it from any award made in such eminent domain proceeding to be paid to the Company for application in one or more of the following ways, as shall be determined by the Company:

- (a) Restoration of the Property to substantially the same condition as existed prior to the exercise of said power of eminent domain.
- (b) Acquisition, by construction or otherwise, of other property having substantially the same use and utility as the property taken in such proceedings (which property will be deemed a part of the Property available for use by the Company under this Agreement).
- (c) Reimbursement to the Company for loss in value of its interest in the Property.

The Board shall cooperate fully with the Company in the handling and conduct of any prospective or pending eminent domain proceeding with respect to the Property or any part thereof and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the Board. In no event will the Board voluntarily settle, or consent to the settlement of, any prospective or pending eminent domain proceeding with respect to the Property or any part thereof without the written consent of the Company.

ARTICLE VIII.

SPECIAL COVENANTS

Section 8.01. No Warranty of Condition or Suitability by Board. The Board makes no warranty, either express or implied, as to the condition of the Property or that it will be suitable for the purposes or needs of the Company. The Company releases the Board from, agrees that the Board shall not be liable for, and agrees to hold the Board and its officers, directors, agents, servants and employees harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Property or the use thereof. The members of the Board of Directors of the Board shall incur no liability either individually or collectively by reason of the obligations undertaken by the Board hereunder.

Section 8.02. Identification of Personal Property Included in Project. The Company will at all times maintain in its permanent records a complete list of the personal property constituting a part of the Project, which will specifically identify each item of such personal property as being property of the Board.

ARTICLE IX.

ASSIGNMENT, SUBLEASING, DEVELOPMENT AND SELLING

Section 9.01. Assignment. This Agreement may be only assigned, as a whole or in part, by the Company without the prior written consent of the Board if:

(a) The Company is permitted to assign the PILOT Agreement in accordance with its terms as set forth in Paragraph 15 of the PILOT Agreement;

(b) The assignee shall assume all obligations of the Company hereunder to the extent of the interest assigned and shall provide documentation and information to the Board, as required under Paragraph 15 of the PILOT Agreement; and

(c) The Company and/or assignee shall, within thirty (30) days after the execution and delivery thereof, furnish or cause to be furnished to the Board a true and complete copy of each such assignment and assumption of obligation, as the case may be.

Upon satisfaction of the requirements of this Section, the assignment shall relieve the Company from further liability for any of its obligations hereunder as of the effective date of the assignment.

Section 9.02. Subleasing. The Company may sublease all or a portion of the Property without the prior written consent of the Board; provided that any such sublease shall not relieve the Company from its obligations under this Agreement or the PILOT Agreement, and such obligations shall remain in full force and effect.

Section 9.03. Financing Approvals and Consents. The Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the Board, in consummating any

financing related to the Project, the Property or other improvements on the Property. Without limitation of the foregoing, the Chairman of the Board, or the Chairman's designee, may, upon the Company's request, enter into or consent to such documents as are necessary to consummate such financing including, without limitation, deeds of trust, estoppel certificates, subordination and non-disturbance agreements, affidavits and certificates, provided that any such documents are expressly non-recourse to the Board beyond its interest in the Property. Any such document shall further be subject to the provisions of Section 8.01 with respect to the immunities provided to members of the Board.

Section 9.04. Cooperation. The Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the Board, in connection with development approvals and requirements and related activities for the Project and the development of the Property. Without limitation of the foregoing, the Chairman of the Board, or the Chairman's designee, may, upon the Company's request, execute zoning, rezoning and variance applications and any subdivision plats, easements or other documents as may be required or useful in connection with the Project or the development of the Property, provided that any such documents are expressly non-recourse to the Board beyond its interest in the Property. Any such document shall further be subject to the provisions of Section 8.01 with respect to the immunities provided to members of the Board.

Section 9.05. Restrictions on Sale of Property by Board. The Board agrees that, except for transactions effected in accordance with Section 11.03 hereof and except as requested by the Company, it will not sell, assign, mortgage, transfer or convey the Property during the Lease Term or create or suffer to be created any debt, lien or charge on the rents, revenues or receipts arising out of or in connection with its ownership of the Property, and it will not take any other action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes; provided, that if the laws of the State of Tennessee at the time shall permit, nothing contained in this Section shall prevent the consolidation of the Board with, or merger into, or transfer of the Property as an entirety to, any public corporation whose property and income are not subject to taxation and which has corporate authority to carry on the business of owning, leasing and selling of the Property; provided that such consolidation, merger or transfer shall be authorized by the governing body of the State of Tennessee.

ARTICLE X.

EVENTS OF DEFAULT AND REMEDIES

Section 10.01. Events of Default Defined. The following shall be "events of default" under this Agreement, and the terms "event of default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure by the Board or the Company to observe and perform any covenant, condition or agreement on its part to be observed or performed, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to one party by the other, unless the one giving notice shall agree in writing to an extension of such time prior to its expiration. If a failure under this Section 10.01(a) is such that it can be corrected but not within the applicable period, it shall not constitute an event of default if

appropriate corrective action is instituted within the applicable period and diligently pursued until the default is corrected.

(b) A voluntary Act of Bankruptcy or an Act of Bankruptcy which, if resulting from the filing or commencement of involuntary proceedings against the Company or the Board, is not dismissed or discharged within sixty (60) days of the filing or commencement thereof.

The foregoing provisions of subsection (a) of this Section are subject to the following limitations: if by reasons of force majeure, the Board or the Company is unable in whole or in part to carry out the agreements on its part herein referred to, the failure to perform such agreements due to such inability shall not constitute an event of default nor shall it become an event of default upon appropriate notification or the passage of this stated period of time. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the State of Tennessee or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires, hurricanes, tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Board or the Company. The Board and the Company agree, however, to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Board or the Company, as the case may be and the Board and the Company shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Board or the Company, unfavorable to it.

Section 10.02. Remedies on Default. Whenever any event of default referred to in Section 10.01 hereof shall have occurred and be subsisting, the Board or the Company, as the case may be, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant under this Agreement including, without limitation, termination of this Agreement.

ARTICLE XI.

OPTIONS IN FAVOR OF COMPANY

Section 11.01. Options to Terminate. The Company shall have the following options to cancel or terminate the term of this Agreement:

(a) At any time, the Company may terminate the Lease Term by giving written notice to the Board of such termination.

(b) At any time, the Company may terminate this Agreement as to a part of the Property by giving written notice to the Board of such termination, and such termination shall forthwith become effective as to that part of the Property.

Section 11.02. Option to Purchase Property. Upon termination or expiration of the Lease Term or termination of this Agreement as to a part of the Property, the Company shall have, and is hereby granted, the option to purchase the Property or that part of the Property as to which the Agreement has been terminated, as the case may be, for the purchase price, in each case, of One Dollar (\$1.00). This option may be exercised whether or not the Company is in default hereunder.

Section 11.03. Conveyance on Exercise of Option. Upon exercise of the option granted above, the Board will, upon receipt of the purchase price, deliver to the Company documents conveying to the Company title to the Property or part of the Property, as the case shall be, by appropriate deeds and bills of sale, subject only to

(a) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the Board;

(b) those liens and encumbrances created by or with the consent of the Company; and

(c) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agreement.

ARTICLE XII.

MISCELLANEOUS

Section 12.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by first class United States mail, postage prepaid, or sent by telegram addressed as follows:

Board:	The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee c/o Phillip A. Noblett, Deputy City Attorney Suite 200, 100 E. 11 th Street Chattanooga, TN 37402
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Company:	Mr. William M. Yandell, III, Heritage - Maclellan Apartments, LLC 5350 Poplar Avenue, Suite 730 Memphis, TN 38119
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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.

Section 12.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Company, the Board, and their respective successors and assigns.

Section 12.03. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.04. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.05. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope, extent or intent of any provision or Section hereof.

Section 12.06. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Tennessee.

[Signature Page Follows]

IN WITNESS WHEREOF, the Board and the Company have caused this Agreement to be duly executed in their respective corporate names, all as of the date first above written.

ATTEST:

By: Dann B. Penney
Secretary

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

By: Hicks Amos
Chairman

HERITAGE - MACLELLAN APARTMENTS,
LLC

By: _____

Title: _____

IN WITNESS WHEREOF, the Board and the Company have caused this Agreement to be duly executed in their respective corporate names, all as of the date first above written.

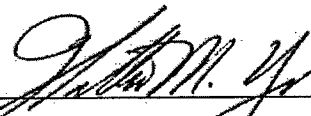
ATTEST:

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

By: _____
Secretary

By: _____
Chairman

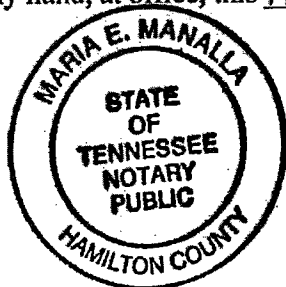
HERITAGE - MACLELLAN APARTMENTS,
LLC

By:  _____
Title: President

STATE OF TENNESSEE
COUNTY OF HAMILTON

Personally appeared before me, Maria Manalla, Notary Public, Hicks Armor and Dana Perry, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained, and who further acknowledged that they are the Chairman and Secretary of the Maker, THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, and are authorized by the Maker to execute this instrument on behalf of the Maker.

WITNESS my hand, at office, this 17th day of March, 2016.



Maria Manalla
Notary Public
My Commission Expires: 5/27/18

STATE OF TENNESSEE
COUNTY OF _____

Personally appeared before me, _____, Notary Public, William M. Yandell, III, with whom I am personally acquainted, and who acknowledged that (s)he executed the within instrument for the purposes therein contained, and who further acknowledged that (s)he is the president of the Maker, HERITAGE - MACLELLAN APARTMENTS, LLC, a Delaware limited liability company, and is authorized by the Maker to execute this instrument on behalf of the Maker.

WITNESS my hand, at office, this _____ day of _____, 2016.

Notary Public
My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

Personally appeared before me, _____, Notary Public, _____ and _____, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained, and who further acknowledged that they are the Chairman and Secretary of the Maker, THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, and are authorized by the Maker to execute this instrument on behalf of the Maker.

WITNESS my hand, at office, this _____ day of _____, 2016.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF Shelby

Personally appeared before me, Melanie Simmonds, Notary Public, William M. Yandell, III, with whom I am personally acquainted, and who acknowledged that (s)he executed the within instrument for the purposes therein contained, and who further acknowledged that (s)he is the president of the Maker, HERITAGE - MACLELLAN APARTMENTS, LLC, a Delaware limited liability company, and is authorized by the Maker to execute this instrument on behalf of the Maker.

WITNESS my hand, at office, this 6th day of April, 2016.

Melanie Simmonds
Notary Public

My Commission Expires: _____

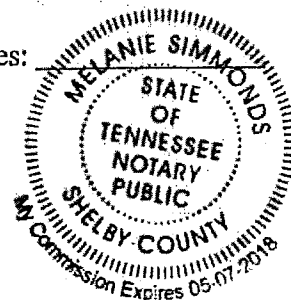


EXHIBIT "A"
TO LEASE

REAL PROPERTY

Land situated in Hamilton County, Tennessee:

Being a part of Lots Fifty-two (52) and Fifty-four (54), Original Town, City of Chattanooga, and being more particularly described according to plat of survey prepared by Betts Engineering Associates, Inc., drawing no. 3492-365-Z05, as follows:

To locate the point of beginning, begin at the intersection of the West line of Broad Street with the North line of East Eighth Street and then go North 00 degrees 02 minutes 00 seconds West, with and along the West line of Broad Street, 137 feet to the point of beginning which is located in the North line of an alley; thence North 89 degrees 58 minutes 05 seconds West, with and along said North line of said alley, 99.11 feet; thence South 00 degrees 03 minutes East 0.73 feet; thence South 88 degrees 48 minutes 00 seconds West 27.11 feet; thence South 00 degrees 03 minutes West 11.31 feet to the North face of the building located on the property conveyed to Blue Cross and Blue Shield of Tennessee, a Tennessee Corporation, by Deed of record in Book 2364, Page 407, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 59 minutes 54 seconds West, with and along said building North face, 110 feet to a point in the East line of Chestnut Street; thence North 00 degrees 07 minutes East, with and along the East line of Chestnut Street, 84.94 feet in a point on the South face of the South wall of the Tivoli Theatre (being the property conveyed to the City of Chattanooga, Tennessee by Deed of record in Book 2304, Page 743, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 57 minutes 47 seconds East, with and along the South face of the South wall of the Tivoli Theatre 118.09 feet, to a point where the South face of the South wall of the Tivoli Theatre turns and runs in a Northeastwardly direction; thence North 50 degrees 19 minutes 19 seconds East, with and along the Southeast face of the Southeast wall of the Tivoli Theatre, 15.62 feet to a point where the Southeast face of the Southeast wall of the Tivoli Theatre turns and runs in a Northwardly direction; thence North 00 degrees 07 minutes 01 seconds West, with and along the East face of the East wall of the Tivoli Theatre, 40.86 feet, to a point where the East face of the East wall of the Tivoli Theatre turns and runs in an Eastwardly direction; thence South 89 degrees 57 minutes 11 seconds East, with and along the South face of the South wall of the Tivoli Theatre, 105.95 feet, to a point in the West line of Broad Street; thence South 00 degrees 02 minutes East, with and along the West line of Broad Street, 123.21 feet to the point of beginning.

TOGETHER WITH all rights appurtenant thereto by virtue of the following language appearing in Deed of record in Book V, Volume 17, Page 689, in the Register's Office of Hamilton County, Tennessee: "and the Grantor agrees for himself, heirs and assigns, to maintain as a private way the twelve (12) foot alley between the James Building and said Annex Building, as now opened," as affected by Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.

TOGETHER WITH such other rights as are appurtenant thereto by virtue of Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.

PERSONAL PROPERTY

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



MARK W. SMITH

Direct Dial 423-785-8357

Direct Fax 423-321-1527

Mark.Smith@millermartin.com

September 1, 2016

Office of the Comptroller
Division of Property Assessments
Suite 1400 (EDA Compliance)
505 Deaderick Street
Nashville, Tennessee 37243-0277

Attention: Mr. Barry Monson

RE: Economic Development Agreement – Heritage – Maclellan Apartments, LLC –
Health, Education and & Housing Facility Board of the City of Chattanooga,
Tennessee

Dear Mr. Monson:

Pursuant to T.C.A. §4-17-301, *et seq.*, we have enclosed a copy of an Agreement For Payments In Lieu of Ad Valorem Taxes with respect to Heritage – Maclellan Apartments, LLC.

Although the documents are dated effective as of April 6, 2016, I have just recently received the fully executed copy for forwarding to your office.

Sincerely,

Mark W. Smith

MWS:cjb
Enclosure

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

THIS AGREEMENT is made and entered into as of the 6th day of April , 2016, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, a public corporation duly created and existing under the laws of the State of Tennessee (the "Board"); HERITAGE - MACLELLAN APARTMENTS, LLC, a Delaware limited liability company (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").

WITNESSETH:

WHEREAS, the Company is contemplating a renovation of the historic Maclellan Building including the construction of apartments with mixed sizes of 40 studio, 42 one (1) bedroom, and 8 two (2) bedroom 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 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 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 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 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 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.

(a) Property Exclusive of Improvements. For each of the years 2015 and thereafter, the Company shall make 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 2015 (the "Base Year") on the value of the associated Property (land, buildings, etc.). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the value of the property in the Base Year exclusive of the improvements made in connection with the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Improvements. After construction of the Project is completed and the Assessor of Property has reassessed the then improved 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"), which the parties acknowledge and agree currently equates to 27.1% 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. Additional In Lieu Payments on the improvements will be as follows:

Year	City General Fund ⁽¹⁾	County General Fund ⁽¹⁾	County School Fund ⁽¹⁾
2016 – 2029	0%	0%	100%
2030	20%	20%	100%
2031	40%	40%	100%
2032	60%	60%	100%
2033	80%	80%	100%
2034	100%	100%	100%

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

As noted above, during such years 2016 to 2034, the Company shall continue to pay the School Portion attributable to the Hamilton County Schools. For any periods before or after such 18-year 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.

(c) For each of the years 2016 to 2034, the Company shall make In Lieu Payments with respect to the commercial and retail space on the first floor of the Property 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 that portion of 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 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 (1½%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1½%) 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) 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 annually defined in 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 the Treasurer and Trustee. All sums received by the Treasurer pursuant to Paragraph 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 Paragraph 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 Paragraph 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 §7-53-305.

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, on or before January 31 of each calendar year during this Agreement, an annual report to the Board, the Mayor of the City, and the Mayor of the County, summarizing its investment in the Property and a certified rent roll. An independent audit of the annual report 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. William M. Yandell, III, Heritage - Maclellan Apartments, LLC, 5350 Poplar Avenue, Suite 730, Memphis, Tennessee 38119; 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.

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. Except as 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.

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'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.

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:

By: Dan B. Farn

Secretary

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

By: Hicks Amor

Chairman

HERITAGE - MACLELLAN APARTMENTS, LLC

By: _____

Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: M Bl

Mayor

HAMILTON COUNTY, TENNESSEE

By: _____

County Mayor

WILLIAM F. HULLANDER

By: _____

Hamilton County Trustee

WILLIAM C. BENNETT

By: _____

Hamilton County Assessor of
Property

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

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

By: _____
Secretary

By: _____
Chairman

HERITAGE - MACLELLAN APARTMENTS, LLC

By: _____
Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

HAMILTON COUNTY, TENNESSEE

By: Jim M. Goggins
County Mayor

WILLIAM F. HULLANDER

By: William F. Hullander
Hamilton County Trustee

WILLIAM C. BENNETT

By: William C. Bennett
Hamilton County Assessor of
Property

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and date first above written.


ATTEST:

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

By: _____
Secretary

By: _____
Chairman

HERITAGE - MACLELLAN APARTMENTS, LLC

By: 
Title: President

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

Land situated in Hamilton County, Tennessee:

Being a part of Lots Fifty-two (52) and Fifty-four (54), Original Town, City of Chattanooga, and being more particularly described according to plat of survey prepared by Betts Engineering Associates, Inc., drawing no. 3492-365-Z05, as follows:

To locate the point of beginning, begin at the intersection of the West line of Broad Street with the North line of East Eighth Street and then go North 00 degrees 02 minutes 00 seconds West, with and along the West line of Broad Street, 137 feet to the point of beginning which is located in the North line of an alley; thence North 89 degrees 58 minutes 05 seconds West, with and along said North line of said alley, 99.11 feet; thence South 00 degrees 03 minutes East 0.73 feet; thence South 88 degrees 48 minutes 00 seconds West 27.11 feet; thence South 00 degrees 03 minutes West 11.31 feet to the North face of the building located on the property conveyed to Blue Cross and Blue Shield of Tennessee, a Tennessee Corporation, by Deed of record in Book 2364, Page 407, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 59 minutes 54 seconds West, with and along said building North face, 110 feet to a point in the East line of Chestnut Street; thence North 00 degrees 07 minutes East, with and along the East line of Chestnut Street, 84.94 feet in a point on the South face of the South wall of the Tivoli Theatre (being the property conveyed to the City of Chattanooga, Tennessee by Deed of record in Book 2304, Page 743, in the Register's Office of Hamilton County, Tennessee; thence North 89 degrees 57 minutes 47 seconds East, with and along the South face of the South wall of the Tivoli Theatre 118.09 feet, to a point where the South face of the South wall of the Tivoli Theatre turns and runs in a Northeastwardly direction; thence North 50 degrees 19 minutes 19 seconds East, with and along the Southeast face of the Southeast wall of the Tivoli Theatre, 15.62 feet to a point where the Southeast face of the Southeast wall of the Tivoli Theatre turns and runs in a Northwardly direction; thence North 00 degrees 07 minutes 01 seconds West, with and along the East face of the East wall of the Tivoli Theatre, 40.86 feet, to a point where the East face of the East wall of the Tivoli Theatre turns and runs in an Eastwardly direction; thence South 89 degrees 57 minutes 11 seconds East, with and along the South face of the South wall of the Tivoli Theatre, 105.95 feet, to a point in the West line of Broad Street; thence South 00 degrees 02 minutes East, with and along the West line of Broad Street, 123.21 feet to the point of beginning.

TOGETHER WITH all rights appurtenant thereto by virtue of the following language appearing in Deed of record in Book V, Volume 17, Page 689, in the Register's Office of Hamilton County, Tennessee: "and the Grantor agrees for himself, heirs and assigns, to maintain as a private way the twelve (12) foot alley between the James Building and said Annex Building, as now opened," as affected by Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.

TOGETHER WITH such other rights as are appurtenant thereto by virtue of Agreement of record in Book 2921, Page 304, in the Register's Office of Hamilton County, Tennessee.

PERSONAL PROPERTY

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