

AMENDMENT 1

To

ORDINANCE NO. BL2016-388

Mr. President-

I move to amend Ordinance No. BL2016-388 by adding a new Section as follows:

Section _____. The approval of the PILOT Agreement is conditioned upon the Project Lease containing the following provisions; and, to the extent any material modification is made thereto it shall be effective only if approved by resolution of the Metropolitan Council:

(A) Term. Subject to the provisions contained in the lease, the lease shall be in full force from its effective date and terminate no later than midnight on December 31, 2115.

(B) All basic rent shall be absolutely net to the Board, free of any taxes, costs, expenses, liabilities, charges, or other deduction with respect to the Land and the possession, operation, maintenance, repair, rebuilding, or use thereof, or any portion thereof.

(C) Company shall agree to waive, to the extent legally permissible, all rights conferred by law to any abatement, suspension, deferment, or reduction of the basic rent or additional rent or any other sums payable under the lease, except as otherwise expressly provided in the lease, regardless of whether such rights shall arise from any present or future constitution, statute, or rule of law.

(D) Company shall agree that the Board will not be liable to the Company for any damages resulting from failure of or any defect in the Board's title to the land which may interfere with, prevent, or render the use of the land burdensome.

(E) Company shall agree that the Board will make no warranty, either express or implied, that the land will be suitable for Company's purposes or needs.

(F) At any time during the term of the lease, including during or after an event of default, or within one year after the end of the term (whether the term expires or the lease is terminated pursuant to its terms or any other reason), after first obtaining the consent of any mortgagee, Company shall have an option to purchase the land for an amount equal to the sum of \$100 plus Company shall deliver the note to the Board marked "cancelled and paid in full."

(G) Company shall agree that The Metropolitan Government shall not in any event be liable for the performance or payment of any pledge, mortgage, obligation, indebtedness agreement of any kind whatsoever or in any agreement or other

instrument, and none of the agreements or obligations of the Board contained in the lease or in any agreement or other instrument shall be construed to constitute an obligation or indebtedness of the Metropolitan Government within in the meaning of any constitutional or statutory provision whatsoever.

I move to further amend Ordinance No. BL2016-388 by adding a new Section as follows:

Section ___: the Metropolitan Government hereby approves and authorizes the execution of the quitclaim deed attached as Exhibit A, conveying the Property to the Board for use as contemplated in this ordinance.

I move to further amend Ordinance No. BL2016-388 by removing the document attached as Exhibit C to the Ordinance and replacing it with the form of the PILOT Agreement attached hereto.

Introduced by:

Member of Council

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (this "Agreement") is entered into as of this ____ day of _____, 2016, by and between ECG WEDGEWOOD, L.P., a Tennessee limited partnership (together with its affiliates or assigns, the "Company"), and THE HEALTH AND EDUCATIONAL FACILITIES BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, a public, nonprofit corporation organized under the laws of the State of Tennessee (the "Board");

In consideration of the premises set forth in Section 1 of this Agreement, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Preliminary Statements. Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following.

(a) The Board was created pursuant to statutes that, as currently amended, are codified at Sections 48-101-301 through 318 of the Tennessee Code Annotated (such statutes, the "Act"). Under T.C.A. § 48-101-312, all properties owned by the Board are exempt from taxation in the State of Tennessee. Pursuant to the Board's Certificate of Incorporation, as amended (the "Charter"), in addition to other rental payments a lessee of Board property must make, such lessee shall make payments in lieu of ad valorem taxes directly to the Metropolitan Trustee (the "Metropolitan Trustee") of the Metropolitan Government of Nashville and Davidson County, Tennessee (the "Metropolitan Government"). The Charter provides that the amount of such payments may be less than the amount of ad valorem taxes that the lessee would owe if it owned the property if the Metropolitan County Council (the "Council") of the Metropolitan Government shall have approved such arrangement by resolution receiving not less than 21 affirmative votes.

(b) The Board and the Company are entering into a PILOT Lease Agreement (the "Lease") of even date herewith pursuant to which the Board will lease to the Company (i) an approximately 0.816 acre parcel of land, approximately 0.510 acre parcel of land and a third parcel (together, the "Land") located at 1440 12th Avenue South, 1500 12th Avenue South, and 0 Wedgewood Avenue respectively, in Davidson County, Tennessee (the "County"), (ii) all easements or other interests in real property that benefit the Land or are appurtenant to the Land, (iii) all buildings, improvements, fixtures, construction in progress and other properties of any nature that are considered real property, in each case as now or hereafter located on the Land, whether in their current or future scope and configuration, and (iv) all personal property located on the Land for which the Board acquires title pursuant to the Lease (collectively, the "Project"). The Lease shall include the following provisions and to the extent any material modification is made thereto it shall be effective only if approved by resolution of the Metropolitan Council:

(i) Term. Subject to the provisions contained in the lease, the lease shall be in full force from its effective date and terminate no later than midnight on December 31, 2115.

(ii) All basic rent shall be absolutely net to the Board, free of any taxes, costs, expenses, liabilities, charges, or other deduction with respect to the Land and the possession, operation, maintenance, repair, rebuilding, or use thereof, or any portion thereof.

(iii) Company shall agree to waive, to the extent legally permissible, all rights conferred by law to any abatement, suspension, deferment, or reduction of the basic rent or additional rent or any other sums payable under the lease, except as otherwise expressly provided in the lease, regardless of whether such rights shall arise from any present or future constitution, statute, or rule of law.

(iv) Company shall agree that the Board will not be liable to the Company for any damages resulting from failure of or any defect in the Board's title to the land which may interfere with, prevent, or render the use of the land burdensome.

(v) Company shall agree that the Board will make no warranty, either express or implied, that the land will be suitable for Company's purposes or needs.

(vi) At any time during the term of the lease, including during or after an event of default, or within one year after the end of the term (whether the term expires or the lease is terminated pursuant to its terms or any other reason), after first obtaining the consent of any mortgagee, Company shall have an option to purchase the land for an amount equal to the sum of \$100 plus Company shall deliver the note to the Board marked "cancelled and paid in full."

(vii) Company shall agree that The Metropolitan Government shall not in any event be liable for the performance or payment of any pledge, mortgage, obligation, indebtedness agreement of any kind whatsoever or in any agreement or other instrument, and none of the agreements or obligations of the Board contained in the lease or in any agreement or other instrument shall be construed to constitute an obligation or indebtedness of the Metropolitan Government within in the meaning of any constitutional or statutory provision whatsoever.

(c) Pursuant to Ordinance Number BL2016-_____, approved by the Council of the Metropolitan Government on _____, 2016, the Council approved the payment in lieu of tax arrangement set forth in this Agreement. Such ordinance received ___ affirmative votes from the Council.

(d) As of the date hereof, the Project consists of unimproved land. Following the execution of the Lease, the Company intends to modify the Project by developing 138 units of income restricted multi-family workforce housing on the Land. The Project will be used to provide multi-family housing facilities for persons of low and moderate income. A minimum of 40% of the units will be restricted to persons earning less than 60% of the area medium gross income in the County ("Affordability").

(e) The Board and the Council each has found, based upon information and factors deemed relevant by each of them, that the Board's agreement to accept payments in lieu of tax with respect to the Project will be in furtherance of the Board's public purposes.

2. Definitions. Terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings given to them below in this Section 2. The location of terms defined elsewhere in this Agreement are listed below in this Section 2.

“Act” - Section 1(a).

“Affiliate” means, as to the person or entity in question, any person or entity that directly or indirectly controls, is controlled by, or is under common control with, the person or entity in question and any successors of such person or entity. For purposes of this definition, “control” means possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a person or entity whether through ownership of voting securities, by contract or otherwise.

“Agreement” - Introductory paragraph.

“Assessor” - Section 4(d).

“Board” - Introductory paragraph.

“Charter” - Section 1(a).

“Company” - Introductory paragraph.

“Council” - Section 1(a).

“County” - Section 1(b).

“Discounted Payment Period” means the period commencing on the date determined pursuant to Section 4(a)(ii), below, and terminating when the Project does not comply with the Affordability requirement for any twelve (12) month period of time.

“Land” - Section 1(b).

“Lease” - Section 1(b).

“Metropolitan Government” - Section 1(a).

“Metropolitan Trustee” - Section 1(a).

“Payments” - Section 3(a).

“Project” - Section 1(b).

“Standard Tax” means, with respect to any period, the amount of ad valorem real and personal property taxes and assessments which, but for this Agreement and the Lease, the Company, if it were the holder of legal title to the Project, otherwise would be assessed by the

Metropolitan Government and be required to pay to the Metropolitan Government with respect to the Project for the applicable period in accordance with the then applicable rates, laws, regulations and assessment and valuation methods and procedures uniformly applied throughout the County with respect to the types of property which comprise the Project (or the applicable portion thereof). In determining the Standard Tax, the Company shall be entitled to any and all exemptions, credits, etc., to which it otherwise would be entitled were it the actual owner of the Project (or the applicable portion thereof).

3. Nature of the Payments.

(a) The payments in lieu of ad valorem taxes (the "Payments") provided for herein shall be paid by the Company in lieu of all ad valorem, real or personal property taxes, whether presently in effect or hereafter imposed on the Project, or any part or component thereof (including, without limitation, any such tax on current or future improvements and current or future fixtures and personal property from time to time subject to the Lease) during the term of this Agreement, by or on behalf of the Metropolitan Government. The Payments will relate to the Project as of the date hereof, and to all replacements, enhancements, additions, expansions and improvements to the Project subjected to the Lease during the term thereof.

(b) The Board will cooperate with the Company and its affiliates and assigns to allow the Company and/or its affiliates or assigns to obtain any applicable tax or other credits and exemptions available under federal and state tax laws with the respect to the Project or any portion thereof (including any applicable federal or state investment tax credits or low income housing tax credits).

4. Amount of Payments. (a) (i) Subject to the provisions of Sections 4(b) through (d) hereof, the amount of the Payments that the Company shall be required to make hereunder with respect to any calendar year shall be calculated as follows:

(A) with respect to the period beginning on the date that the Lease is executed until the first day of the Discounted Payment Period, the annual amount of the Payment will be an amount equal to one hundred percent (100%) of the Standard Tax for such year (as prorated in accordance with Section 4(c), below);

(B) with respect to the Discounted Payment Period, the annual amount of the Payment will be an amount equal to zero percent (0%) of the Standard Tax for such year (as prorated in accordance with Section 4(c), below); and

(C) with respect to any period between the end of the Discounted Payment Period and the date that the Board conveys title to the Project to the Company or its designee, the annual amount of the Payment will be an amount equal to one hundred percent (100%) of the Standard Tax for such year (as prorated in accordance with Section 4(c), below).

(ii) The Company shall have the right to specify the date on which the Discounted Payment Period commences by giving the Board and the Metropolitan Trustee written

notice of such commencement date not less than thirty (30) days before such designated commencement date. Notwithstanding the foregoing, the Discounted Payment Period must commence within three years of the date on which the Lease is executed. If the Company does not timely give notice of the commencement of the Discounted Payment Period for a date that is prior to the third anniversary of the date on which the Board acquires title to the Project, the Discounted Payment Period will commence on such third anniversary.

(iii) All Payments hereunder with respect to any calendar year shall be due on or before the last day of February during the following year and shall be made to the Metropolitan Trustee of the Metropolitan Government.

(b) (i) The Company shall receive as credits (or set-offs) against the Payments amounts equal to any amounts actually paid by the Company or any of its affiliates, or assigns for any asserted ad valorem tax on the Company's or any of its affiliate's, or assign's interest in the Project (including any such asserted tax on the leasehold or other estate in the Project of the Company or any of its affiliates, sub-lessees or assigns). Any credits or set-offs against Payments pursuant to this Section 4(b)(i) may be taken by the Company with respect to the Payment for the year in which the taxes underlying such credit or set-off were incurred or such credits or set-offs may be carried forward and taken as soon thereafter as possible, but in no event may such a credit or set-off reduce the amount of any Payment required hereunder for any year after the term of this Agreement shall have expired.

(ii) If during any year during the term of this Agreement or upon the expiration or termination of this Agreement the amount of credits (or set-offs) that the Company has accumulated (including credits and set-offs for that year and credits and set-offs that have been carried forward from prior years) exceeds the amount of the Payment required to be made by the Company before or after giving effect to Section 4(b)(i) hereof, the Board shall not be obligated to make any payment to the Company with respect to such excess credits or set-offs.

(c) The amount of Payments shall be prorated on a daily basis for any calendar year in which (i) this Agreement is in effect for less than the entire calendar year or (ii) the amount of the Payments is different for different parts of the calendar year (e.g., if the Agreement is in effect for an entire calendar year and the Discounted Payment Period commences on July 1 of such calendar year, the Payment for such calendar year would be one hundred percent (100%) of the Standard Tax for the period from January 1 through June 30 of such year plus zero percent (0%) of the Standard Tax for the period from July 1 through December 31 of such calendar year). If this Agreement terminates in any year during which this Agreement requires the Company to make a Payment, and if there then shall be a credit or set-off that shall have been carried forward from prior years pursuant to Section 4(b)(i) above, the Company will be entitled to deduct such carried forward credit or set-off from such prorated Payment. In addition to any such carried forward credits or set-offs, the Company also will be entitled to deduct any credits or set-offs to which it is entitled under Section 4(b)(i) hereof with respect to taxes paid for the prorated year.

(d) With respect to the Project and each portion thereof, the reduction of the Payments to 0% of the Standard Tax (pursuant to Section 4(a)(i)(B) hereof) shall apply only so long as the Project (or the applicable portion thereof) is leased by the Board to ECG Wedgewood, L.P.

(or its successor entity) or any corporation, partnership, limited liability company or other entity which is an affiliate of ECG Wedgewood, L.P. (or its successor entity). During any period while the condition required by this Section 4(d) is not satisfied, the amount of the Payment for such period shall be 100% of the Standard Tax. Such amount shall be prorated on a daily basis if the period during which such condition is not satisfied is less than an entire calendar year. Such amount shall be subject to the credits (or set-offs) provided in Section 4(b) hereof.

(e) The amount of Standard Tax with respect to the portion of the Project consisting of real property, improvements, fixtures or other property treated as real property for property tax purposes shall be computed annually by the Metropolitan Trustee. Any disputes with respect to the determination of the amount of the Standard Tax or the amount of the Payments to be made hereunder for a given year shall be resolved in accordance with the procedures for resolving disputes regarding property taxes then in effect as though the Company were the holder of the legal title to the Project and the Project were subject to taxation. It is specifically understood and agreed that the Company and the Board shall have recourse to the State Board of Equalization with respect to any property assessment value determination made by the Assessor of Property for the Metropolitan Government (the "Assessor") and/or the Company or the Board may file a declaratory judgment action or other action in the Chancery Court of Davidson County, Tennessee, or in other courts of competent jurisdiction in Davidson County, Tennessee, with respect to such matters or other matters arising under this Agreement. The parties acknowledge and agree that the preceding sentence is subject to the jurisdictional limitations of the State Board of Equalization and the Chancery Court and other courts sitting in Davidson County, Tennessee, and that this Agreement does not obligate such State Board of Equalization or any such court to accept jurisdiction over matters as to which it has no lawful jurisdiction.

5. Company Discharge of Obligation. The Company shall have discharged its payment obligations to the Board under this Agreement for a given year upon making the Payments as provided herein to the Metropolitan Trustee of the Metropolitan Government.

6. Term. This Agreement shall become effective and its term shall begin as of the date of this Agreement. This Agreement shall expire at the earlier of the following dates: (a) the date that the Company or its designee shall have taken legal title to the Project by the exercise of its purchase option under the Lease or (b) the thirtieth (30th) anniversary of the date of this Agreement.

7. Representations and Warranties. (a) ECG Wedgewood, L.P. hereby represents and warrants to the Board that (i) it is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Tennessee and has all requisite corporate power and authority to enter into this Agreement, and (ii) this Agreement has been duly and validly authorized by all necessary partnership action on the part of the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with the terms hereof.

(b) The Board hereby represents and warrants to the Company that: (i) it is a public nonprofit corporation duly organized and validly existing under the laws of the State of Tennessee and has all requisite corporate power and authority to enter into this Agreement and (ii) this Agreement has been duly and validly authorized by all necessary corporate action on the part of

the Board and constitutes the valid and binding obligation of the Board, enforceable against the Board in accordance with the terms hereof.

8. Further Acts; Enforceability. The parties hereto agree to take such actions, adopt such resolutions and enter into such further agreements as may be necessary, or reasonably requested by any party to this Agreement, to effect the intent of this Agreement. The parties recognize and acknowledge that it is their intention that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Tennessee, but that the unenforceability (or the modification to conform with such laws or public policies) of any provisions hereof shall not render unenforceable or impair the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be determined to be invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provisions and to alter the balance of this Agreement in order to render the same valid and enforceable to the fullest extent permissible as aforesaid.

9. Assignment and Use. The Company, at its election, may assign all or any portion of this Agreement or the benefits hereunder to its successors and assigns. Additionally, the Company may cause the Project to be operated by another party without losing any of the benefits hereunder. Notwithstanding the foregoing, the Company acknowledges that the amount of the annual Payment that the Company or its successors or assigns shall be required to make with respect to a given year is subject to the condition set forth at Section 4(d) hereof.

10. Operation of Project. The parties acknowledge and agree that by entering into this Agreement, the Company is not agreeing the Project will be operated continuously during the term of the Lease and that the operations at the Project may be discontinued at any time. The Company acknowledges, however, that the Project may not be operated except in accordance with the Affordability requirement throughout the term of the Lease.

11. Headings. The headings herein are for convenience of reference only and shall not be deemed to be part of the substance of this Agreement.

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

13. Counterparts. This Agreement may be executed in two or more counterparts which together shall constitute a single instrument.

14. Annual Reports. The Company agrees to (a) submit to the State Board of Equalization the annual report required by T.C.A. §48-101-312(d) on or before October 1 of each year, (b) file such report with the Tax Assessor of Davidson County, Tennessee on or before October 15 of each year as required by T.C.A. §48-101-312(d) and (c) provide a copy of such report to the Board on or before October 15 of each year.

IN WITNESS WHEREOF, the parties have executed this Payment in Lieu of Tax Agreement as of the date first above written.

ECG WEDGEWOOD, L.P.

By: ECG WEDGEWOOD GP, LLC,
its general partner

ATTEST:

By: _____
Name: _____
Title: _____

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

ATTEST:

By: _____
Stephen L. Meyer
Chairman

Richard L. Brown
Secretary

APPROVED AS TO FORM AND
LEGALITY:

Assistant Metropolitan Attorney