

Ordinance No. BL2014- 848

An ordinance authorizing the Health and Educational Facilities Board of the Metropolitan Government of Nashville and Davidson County, Tennessee to negotiate and execute an agreement for payments in lieu of ad valorem taxes with HCA Realty, Inc.

WHEREAS, The Metropolitan Government of Nashville and Davidson County (hereafter referred to as "Metropolitan Government"), is vitally interested in the economic welfare of the citizens of Davidson County and wishes to provide the necessary leadership to enhance this area's capabilities for growth and development; and

WHEREAS, the provision of jobs to area citizens by local business is both necessary and vital to the economic well-being of Davidson County; and

WHEREAS, the Metropolitan Government is also vitally interested in the health of its citizens and the adequacy of its citizens' access to adequate medical care and health care facilities; and

WHEREAS, the availability of adequate medical care and health care facilities to area citizens is necessary and vital to the health of the citizens of Davidson County, to the economic well-being of the Metropolitan Government, and to the ability of the Metropolitan Government to attract and retain employment and other benefits for the citizens of Davidson County; and

WHEREAS, The Health and Educational Facilities Board of The Metropolitan Government of Nashville and Davidson County, Tennessee (hereafter referred to as the "Board"), is empowered pursuant to T.C.A. § 48-101-308 to acquire real and personal property (including real and personal property used as "projects," as defined at T.C.A. § 48-101-301(15), for "hospital institutions," as defined at T.C.A. 48-101-301(8)), whether by purchase, construction, exchange, gift, lease or otherwise, and to improve, maintain, extend, equip and furnish such properties; and

WHEREAS, the Board also is empowered pursuant to T.C.A. § 48-101-308 to lease such property to others and to convey such property to the lessee with or without consideration upon the payment of all indebtedness of the Board in respect of such property; and

WHEREAS, pursuant to T.C.A. § 48-101-312, all properties owned by the Board are exempt from taxation in the State of Tennessee, including ad valorem taxation; and

WHEREAS, the Certificate of Incorporation of the Board, as amended, permits the Board to negotiate and execute agreements for payments in lieu of tax from lessees of Board properties in amounts less than the property taxes such lessees would owe with respect to such properties if such lessees owned such properties, but only if the Metropolitan County Council of the Metropolitan Government (the "Council") approves such reduced or eliminated amounts of payments in lieu of tax; and

WHEREAS, pursuant to an Agreement for Exchange of Real Estate, dated as of May 17, 2011, between the Metropolitan Government and HCA Realty, Inc., a Tennessee corporation ("HCA Realty"), as amended by Amendment No. 1 to Agreement for Exchange of Real Estate, dated as of June 10, 2014, between the Metropolitan Government and HCA Realty (such agreement, as so

amended, the “Exchange Agreement”), the Metropolitan Government agreed to acquire certain real property located at 2512 Charlotte Avenue (the “HCA Property”) from HCA Realty in exchange for the Metropolitan Government’s real property known as the Lentz Public Health Center consisting of an approximately 3.768 acre parcel located at 311 23rd Avenue, North and the improvements thereon (the “Metro Property”) and certain other consideration; and

WHEREAS, pursuant to the Exchange Agreement, the Metropolitan Government agreed that at the request of HCA Realty, the Metropolitan Government would (a) convey the Metro Property to the Board and (b) delegate to the Board the authority to negotiate and accept payments in lieu of all real and personal property taxes with respect to the Metro Property on the terms and conditions set forth in this Ordinance and in the form of the Payment in Lieu of Tax Agreement attached hereto as Exhibit A; and

WHEREAS, HCA Realty has requested the Metropolitan Government to convey the Metro Property to the Board and to authorize such payment in lieu of tax arrangement; and

WHEREAS, HCA Realty intends to use the Metro Property as a “project” as defined at T.C.A. 48-101-301(15); and

WHEREAS, initially the Metro Property will be used as a parking facility for Centennial Medical Center and other healthcare facilities operated by affiliates of HCA Realty; and

WHEREAS, other or additional facilities that constitute a “project” (as defined at T.C.A. 48-101-301(15)) may be developed and operated on the Metro Property; and

WHEREAS, the Board will hold title to the Metro Property, such improvements as exist at the Metro Property from time to time and such equipment and other personal property as may be located at the Metro Property from time to time (collectively, the “Project”) and will lease the Project to HCA Realty pursuant to a lease agreement (the “PILOT Lease”); and

WHEREAS, the Council finds that the Board’s acceptance of payments in lieu of ad valorem taxes with respect to the Project is in furtherance of the Board’s public purposes; and

WHEREAS, it is in the interest and welfare of the Metropolitan Government to delegate authority to the Board to negotiate and accept a payment in lieu of tax agreement with HCA Realty pursuant to which the Board will accept payments in lieu of tax with respect to the Project from HCA Realty.

NOW, THEREFORE, BE IT ENACTED BY THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: The Metropolitan Government hereby delegates to the Board the authority to enter into a Payment in Lieu of Tax Agreement (“PILOT Agreement”) with respect to the Project (which PILOT Agreement shall be in substantially the form as attached hereto as Exhibit A) and to negotiate and accept payments in lieu of all ad valorem real property taxes and personal property taxes with respect to the Project for the period during the Term of such PILOT Agreement. The Term of the PILOT Agreement will begin as of the effective date of the PILOT Lease (which will be the date on which the Board acquires title to the Project), and will end on

the latter of the tenth (10th) anniversary of the commencement date of the Discounted Payment Period (as defined below) or the date on which the Board conveys title to the Project to HCA Realty or its designee in accordance with the PILOT Lease.

Section 2: (a) Subject to the adjustments described in the form of the PILOT Agreement attached hereto as Exhibit A, the amount of the payments in lieu of tax with respect to the Project (the "PILOT Payments") that shall be required for each calendar year during the Term of the PILOT Agreement shall be as follows:

(i) with respect to the period beginning on the date that the Board acquires title to the Project until the first day of the Discounted Payment Period, the annual amount of the PILOT Payment will be an amount equal to one hundred percent (100%) of the Standard Tax (as defined below) for such year;

(ii) with respect to the first five years of the Discounted Payment Period, the annual amount of the PILOT Payment will be an amount equal to zero percent (0%) of the Standard Tax for such year;

(iii) with respect to years six through ten of the Discounted Payment Period, the annual amount of the PILOT Payment will be an amount equal to fifty percent (50%) of the Standard Tax for such year; and

(iv) 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 HCA Realty or its designee, the annual amount of the PILOT Payment will be an amount equal to one hundred percent (100%) of the Standard Tax for such year.

(b) HCA Realty shall have the right to specify the date on which the Discounted Payment Period commences by giving the Board and the Metropolitan Trustee of the Metropolitan Government 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 Board acquires title to the Project. If HCA Realty 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.

(c) The term "Standard Tax" shall mean, with respect to any period, the amount of ad valorem real and personal property tax that HCA Realty would be required to pay with respect to such period with respect to the Project that is then subject to the PILOT Lease if HCA Realty owned such Project.

(d) The term "Discounted Payment Period" means the ten-year period commencing on the date determined pursuant to Section 2(b) above.

(e) To the extent the leasehold, sub-leasehold or similar interest of HCA Realty or its sub-lessees or assigns in the Project is assessed and taxed by the Metropolitan Government (collectively, "Leasehold Taxes"), the amount of the required PILOT Payment may be reduced by the amount of Leasehold Taxes actually paid to the Metropolitan Government by HCA Realty or such other entity. If the amount of Leasehold Tax payments actually made by HCA Realty or such other entities to the Metropolitan Government exceeds the annual required PILOT Payment, such excess Leasehold Taxes may be carried forward and applied against PILOT Payments with respect to any future year ("Leasehold Tax Credits"). All unapplied Leasehold Tax Credits may be carried forward and applied against PILOT Payments with respect

to any future years during the Term of the PILOT Agreement authorized hereby. Additionally, HCA Realty shall have the right to determine the order in which it applies Leasehold Taxes and carried forward Leasehold Tax Credits against PILOT Payments pursuant to this Section 2(e).

(f) HCA Realty shall be permitted to challenge the assessment of any portion of the Project that is then subject to the PILOT Lease in the same manner as if such entity owned such portion of the Project.

(g) HCA Realty will make PILOT Payments on an annual basis, with each annual PILOT Payment being based on the applicable calendar year during the Term of the PILOT Agreement authorized hereby. PILOT Payments will be due on or before the last day of February following the calendar year to which a PILOT Payment applies. The final version of the PILOT Agreement authorized by this Ordinance will include appropriate provisions for the proration of the Standard Tax and the PILOT Payment applicable to a given year under appropriate circumstances, including, without limitation, for periods of less than a full calendar year for which a PILOT Payment is payable with respect to the Project (or any portion of the Project).

Section 3: The PILOT Agreement authorized by this Ordinance shall apply to the portion of the Metro Property consisting of land (the "Land"), all real property comprising a portion of, or used at or in connection with facilities located on the Land, including all easements or other property rights, buildings, improvements, fixtures, trade fixtures, construction in progress, and other properties of any nature comprising a portion of, or used in connection with, facilities located on the Land that are treated as real property for ad valorem tax purposes and all personal property located on the Land and leased to HCA Realty pursuant to the PILOT Lease. The PILOT Agreement shall apply to such facilities and properties (including personal property) in existence on the effective date of the PILOT Lease and to all replacements, enhancements, additions, expansions and improvements to such facilities and properties comprising the Project.

Section 4: HCA Realty will produce and manage a diversified business enterprise program to assist small, minority owned, and women owned business enterprises ("DBEs") with respect to their participation in the construction of the Project. Such program will be designed with a DBE participation target of not less than 20% of the Project's hard construction costs, shall be subject to the reasonable approval of the Metropolitan Government, and will provide for quarterly reporting by HCA Realty to the Metropolitan Council and the Minority Caucus of the status of DBE participation in the construction of the Project. The program will include a process to document all (i) good faith efforts with prospective bidders to reach out to DBE companies, (ii) joint venture or partnership participation by DBE companies, (iii) DBE participation by subcontractors, suppliers or joint ventures proposed by each bidder, (iv) any increases or decreases from an anticipated DBE participation by successful bidders, and (v) the level of payments to DBE's of the Project's hard construction costs. Additionally, HCA Realty will utilize the Metropolitan Government's workforce development program with the goal of ensuring that reasonable efforts are made to hire or utilize residents of Davidson County for the construction of the Project.

Section 5: All ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

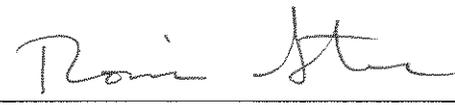
Section 6: This Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY
OF FUNDS:



Richard M. Riebeling
Director of Finance

INTRODUCED BY:



APPROVED AS TO FORM AND
LEGALITY

Assistant Metropolitan Attorney

Members of Council