



Hamilton County Board of Commissioners RESOLUTION

No. 1216-8

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE RIVER VIEW HOUSING ASSOCIATES, L.P., PROJECT TO PROVIDE LOW-TO-MODERATE INCOME ELDERLY HOUSING THROUGH THE ACQUISITION AND RENOVATION OF THE JAYCEE TOWER, TO DELEGATE CERTAIN AUTHORITY TO THE CHATTANOOGA HOUSING AUTHORITY, AND TO AUTHORIZE THE COUNTY MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.

WHEREAS, River View Housing Associates, L.P. (the "Company") is contemplating the acquisition of the Jaycee Tower, located at 500 W. Martin Luther King Boulevard, Chattanooga, Hamilton County, Tennessee, and the renovation, equipping, and furnishing of a multifamily, low-to-moderate income elderly tenants housing unit (the "Facility"); and,

WHEREAS, the Chattanooga Housing Authority (the "Authority") has agreed to take title to said real and personal property that constitutes the Facility, which Facility will be owned by the Authority and leased to the Company; and

WHEREAS, because of the substantial economic benefits to the City of Chattanooga and the County resulting from the project, the Company and the Authority have asked the Board of Commissioners of the County (the "Commission") and the City of Chattanooga (the "City") to approve payments in lieu of ad valorem taxes and to make a finding that such payments are in furtherance of the Authority's public purposes; and

WHEREAS, the Commission has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the public purposes of the Authority as set forth within Chapter 20

of Title 13 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 River View Housing Associates, L.P., project 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 public purposes of the Authority; and that the Authority is hereby delegated with 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 this 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 substantially in the form attached hereto, with such changes thereto as he shall approve.

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

CERTIFICATION OF ACTION

Approved:



Rejected:



Approved:



Vetoed:





County Clerk



County Mayor

December 7, 2016

Date

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

THIS AGREEMENT is made and entered into as of the ___ day of _____, 2016, by and among the CHATTANOOGA HOUSING AUTHORITY (the “Authority”); RIVER VIEW HOUSING ASSOCIATES, LP, a Tennessee limited partnership (the “Company”); the CITY OF CHATTANOOGA, TENNESSEE (the “City”); and HAMILTON COUNTY, TENNESSEE (the “County”) and is joined in, for purposes of evidencing their acceptance of the agency relationship established herein, by WILLIAM F. HULLANDER and his successors, acting in the capacity of HAMILTON COUNTY TRUSTEE (“Trustee”), and by MARTY HAYNES and his successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY (“Assessor”).

WITNESSETH:

WHEREAS, the Company is contemplating the acquisition and renovation of the Jaycee Tower located at 500 W. Martin Luther King Boulevard, Chattanooga, Tennessee, for use as a multifamily housing facility for low-to-moderate income elderly tenants, as further described in Section 5 below (the “Project”) and has requested the Authority’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 Authority 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 Authority and leased to the Company; and

WHEREAS, because the Property is to be owned by the Authority, which is a public body and a body corporate and politic organized under the provisions of Tennessee Code

Annotated, §13-20-102, et seq. (the "Tennessee Housing Authorities Act"), 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 Authority; and

WHEREAS, for the public benefit of the citizens of the City and the County, the Authority has requested that the Company make certain payments to the Authority 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 Authority in lieu of the property taxes otherwise payable on the Property (the "In Lieu Payments"), as more particularly set forth hereinafter; and

WHEREAS, the Authority 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 Authority the authority to accept the In Lieu Payments upon compliance with certain terms and conditions; and

WHEREAS, the Authority 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 Authority wishes to designate the Trustee and the City Trustee, as applicable, as its agent to receive the In Lieu Payments in accordance with the terms of this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. Designation of Assessor; Appraisal and Assessment of Property. The Authority 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 Authority, 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 Authority 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 Authority hereby designates the Trustee as its agent to compute the amounts of the In Lieu Payments. On or about October 1 of each year during the term of this agreement, the Trustee shall compute the taxes which would be payable on the Property if it were subject to property taxes, in accordance with the Constitution and laws of the State of Tennessee and in accordance with the appraisal and assessment of the Assessor. Each year hereunder, the Trustee shall send the Authority 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 in accordance with the amount set forth below in Section 4. The In Lieu Payments shall be made by the Company in lieu of the property taxes which would otherwise be payable on the Property if it were subject to property taxes.

4. Amount of Payments by the Company. For the eleven (11) year period covering and inclusive of years 2017 through 2027 (the "Tax Abatement Period"), the Company shall make In Lieu Payments with respect to the Property in an amount equal to \$51,000 per year. The entire amount of each In Lieu Payment due during the Tax Abatement Period shall be paid by the Trustee into the County School Fund and dedicated to the support of the County School System. The Tax Abatement Period shall automatically renew for three additional terms of ten (10) years

each, unless the City or the County has given written notice of nonrenewal to the Company as a result of an Event of Default by the Company under this Agreement. The amount of the In Lieu Payments due during each renewal term shall increase by fifteen percent (15%) at the beginning of each renewal term, so that the amount of the In Lieu Payments due during (i) the first renewal term shall be \$58,650, (ii) the second renewal term shall be \$67,447.50, and (iii) the third renewal term shall be \$77,564.63. An "Event of Default" shall mean the failure by the Company to comply with its obligations under Section 5 with respect to the Project; provided, however, that any such failure shall not become an Event of Default unless such failure continues for a period of more than one hundred eighty (180) days following receipt by the Company of written notice from the City or the County specifying such failure in reasonable detail.

For any periods before or after the Tax Abatement Period (as it may be renewed in accordance with this Agreement) during which the Property is owned by the Authority, 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 to the City and the County on the Property if it were subject to property taxes.

5. Covenants by the Company Regarding the Project. The Company covenants as follows:

(a) The Project will be completed within twenty-four (24) months following the date of this Agreement. During the construction period, the Company will temporarily relocate all residents of the Jaycee Tower to other units within the Jaycee Tower at no expense to those residents.

(b) After completion of the Project and during the Tax Abatement Period (as it may be renewed from time to time in accordance with this Agreement), 100% of the

dwelling units in the Project will be set aside for occupancy by individuals whose income is not greater than 80% of the area median income as annually defined in the most recent guidelines published by the Department of Housing and Urban Development, with at least 80% of the dwelling units in the Project being set aside for occupancy by individuals whose income is not greater than 60% of the area median income as annually defined in the most recent guidelines published by the Department of Housing and Urban Development.

(c) After completion of the Project and during the Tax Abatement Period (as it may be renewed from time to time in accordance with this Agreement), 100% of the dwelling units in the Project shall be set for occupancy by individuals who are elderly or who otherwise meet the criteria for occupancy at the Project established or approved from time to time by the Department of Housing and Urban Development or the Tennessee Housing Development Agency. For purposes of this Agreement, the term "elderly" shall mean individuals who are 55 years of age or older and/or who have received approval by the Department of Housing and Urban Development or the Tennessee Housing Development Agency for residency at the Project. Additionally, the Company shall maintain a Resident Services Coordinator for the Project.

(d) After completion of the Project and during the Tax Abatement Period (as it may be renewed from time to time in accordance with this Agreement), the Project shall be maintained in good and habitable condition in compliance with all applicable City and County ordinances and codes and in accordance with the attached plans for renovation of the Jaycee Tower that were presented to the City Council on October 18, 2016 or as otherwise approved by the City Chief Building Official.

6. 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 Authority, the City or the County shall have the right 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 shall have the right, as to their respective In Lieu Payments, to 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) Upon the occurrence and during the continuance of an Event of Default (as defined in Section 4 above), the City and the County shall 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; provided, however, that upon the occurrence and during the continuance of an Event of Default (as defined in Section 4 above) resulting from the Company's failure to comply with Section 5(b) or (c) above, the additional amount of In Lieu Payments to be made by the Company shall be determined by multiplying the In Lieu Payments on the Property owed pursuant to Section 4 during the period of the continuance of such Event of Default by a fraction (expressed as a percentage), the denominator of which is the number of dwelling units at the Project subject to the requirements of Sections 5(b) and (c) and the numerator of which is the number of dwelling units that do not meet the requirements of Sections 5(b) and (c). The County and the City shall look solely to the Company for any repayment obligations.

7. Disbursements by the Treasurer and Trustee. All sums received by the Trustee pursuant to Section 4 for the benefit of the County school system shall be disbursed to the County and thereafter deposited into an account for the educational use and benefit of the County schools. All sums received by the Treasurer pursuant to Section 4 for the benefit of the City general fund shall be disbursed to the general funds of the City in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All sums received by the Trustee pursuant to Section 4 for the benefit of the County general fund shall be disbursed to the general fund of the County in

accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All such sums received by the Treasurer shall be placed into an account for the use and benefit of the City. All such sums received by the Trustee shall be divided into an account for the use and benefit of the County. The account for the use and benefit of the City shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the City, and the account for the use and benefit of the County shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the County. The parties acknowledge and agree that all disbursements to the City and County pursuant to this Agreement are in furtherance of the Authority's public purposes as set forth in the Tennessee Housing Authorities Act.

8. 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.

9. Annual Report. The Company will provide, on or before February 15 of each calendar year during this Agreement following the date the Project is placed in service, (i) a copy of the Owner's Annual Certification of Compliance that the Company has provided to the Tennessee Housing Development Agency for the prior calendar year, and (ii) a certification of the Company as to the Company's compliance with the covenants set forth in Section 5. An independent audit of these certifications may occur if requested by the City or the County during any calendar year of this Agreement.

10. 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.

11. Term. This Agreement shall become effective on the date that the Authority attains title to the Property and shall continue for so long as the Authority holds title to any of the Property or the Company has made all payments required hereunder, whichever shall later occur.

12. 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.

13. 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.

14. 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, 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 Authority, c/o _____; if to the Company, c/o _____; 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 sent by U.S. certified mail, return receipt requested, shall be effective three days after sending, or when sent by overnight courier or personal delivery, shall be effective upon delivery, or when sent by facsimile transmission, confirmed electronically, shall be effective when sent, in each case addressed as aforesaid.

15. 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.

16. Assignment. Except in the event of the conveyance of the Property as a result of a foreclosure or deed in lieu of foreclosure or except as otherwise provided in this Section, the Company may only assign this Agreement, or any part hereof, with the prior consent of the

Mayor of the City, the Mayor of the County, and the Authority. The Mayor of the City, the Mayor of the County and/or the Authority shall not withhold such consent upon the occurrence of all of the following conditions: (i) there is no Event of 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 Authority (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 Authority 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 Authority 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 Authority. In the event that the Mayor of the City, the Mayor of the County and the Authority 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

Authority of Commissioners of the County and the Authority 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.

17. 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.

18. No Liability of Authority'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 Authority, whether past, present or future, either directly or through the Authority. 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.

19. 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.

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

21. 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.

THE CHATTANOOGA HOUSING AUTHORITY

ATTEST:

By: _____
Chairman

By: _____
Secretary

RIVER VIEW HOUSING ASSOCIATES, LP

By: Hightower Realty, LLC, its general partner

By: _____
Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

HAMILTON COUNTY, TENNESSEE

By: _____
County Mayor

WILLIAM F. HULLANDER

By: _____
Hamilton County Trustee

MARTY HAYNES

By: _____
Hamilton County Assessor of
Property

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

REAL PROPERTY

[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.