



## Hamilton County Board of Commissioners

# RESOLUTION

No. 1217-30

**A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE ALCO WOODLAWN PARTNERS, L.P., TO DELEGATE CERTAIN AUTHORITY TO THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, AND TO AUTHORIZE THE COUNTY MAYOR, COUNTY ASSESSOR, AND COUNTY TRUSTEE TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.**

**WHEREAS**, pursuant to Tennessee Code Annotated, Section 7-53-305(b) the County of Hamilton (the "County") is permitted to delegate to The Health, Educational and Housing 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 County that such payments are deemed to be in furtherance of the Board's public purposes; and

**WHEREAS**, Alco Woodlawn Partners, L.P. (the "Company") is contemplating the improvement of the multi-family residential properties located at 2300 Wilson Street, 1101 Arlington Avenue, and 2300 Windsor Street (the "Developer") to cause the improvement of certain real property in Chattanooga, Hamilton County, Tennessee, including the renovation, equipping and furnishing of a low income housing tax credit apartment project with approximately 163 one, two and three bedroom units (collectively, the "Project"); and because of the substantial economic benefits to the City of Chattanooga and Hamilton County resulting from the Project, has asked the Board and the County Commission to approve payments in lieu of ad valorem taxes; and

**WHEREAS,** the Commission 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 53 of Title 7 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 Project is in the best interest of the County, and that payments in lieu of ad valorem taxes derived therefrom, with no reduction in the amount that the County would normally receive in ad valorem taxes during the term of the attached Agreement, 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, it being further noted that this delegation is for this purpose and this project only; and

That the County Mayor, County Assessor, and County Trustee are 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 they shall approve.

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

Approved:

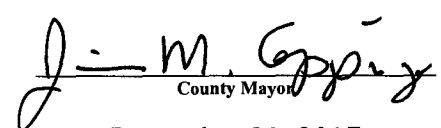
Rejected:

Approved:

Vetoed:

CERTIFICATION OF ACTION

  
County Clerk

  
County Mayor

December 20, 2017

Date

May 14, 2018

Via Hand Delivery

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

Wade A. Hinton, Esq.  
City Attorney  
City of Chattanooga  
100 East 11th Street, Suite 200  
Chattanooga, Tennessee 37402



RE: Alco Woodlawn Partners, L.P.

Dear Rheubin and Wade:

We are enclosing transcripts for the above-referenced PILOT for the County, City and Health & Ed Board files in connection with this PILOT arrangement. We have also prepared an electronic copy of this transcript, so if you would like to have an electronic copy as well please let me or my assistant, Carol Bain, know.

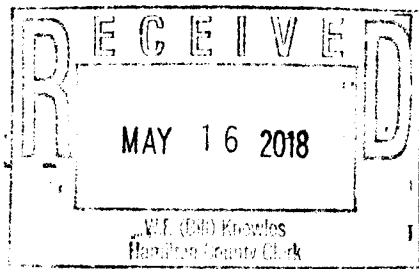
Otherwise, thank you for all the work that went into completing this PILOT.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Mark W. Smith'.

Mark W. Smith

MWS:cjb  
Enclosure



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

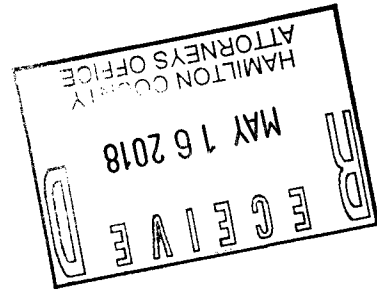
ATLANTA  
CHARLOTTE  
CHATTANOOGA  
NASHVILLE

May 14, 2018

Via Hand Delivery

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

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City Attorney  
City of Chattanooga  
100 East 11th Street, Suite 200  
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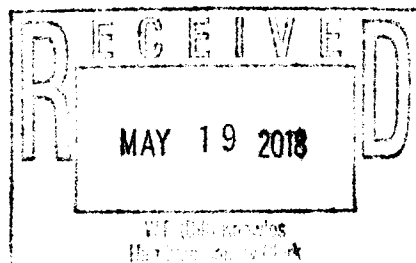
Otherwise, thank you for all the work that went into completing this PILOT.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'MWS'.

Mark W. Smith

MWS:cjb  
Enclosure





**TRANSCRIPT INDEX**

***Alco Woodland Partners, L.P.***

***The Health, Educational and Housing Facility  
Board of the City of Chattanooga***

**Closing Date: February 15, 2018**

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1. City of Chattanooga, Tennessee Resolution No. 29215 as passed – October 17, 2017.
2. The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee Resolution No. HEB2017-10, as passed – October 25, 2017.
3. Hamilton County, Tennessee Commission Agenda and Resolution No. 1217-30, as passed – December 20, 2017.
4. Quitclaim Deed with HUD Rider.
5. Lease Agreement.
6. Lease Addendum – HUD.
7. Agreement for Payments In lieu of Ad Valorem Taxes.
8. Letter to Barry Monson, Tennessee Comptroller's Office forwarding PILOT Agreement.

RESOLUTION NO. 29215

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE BAYBERRY APARTMENTS DEVELOPMENT (ALCO WOODLAWN PARTNERS, LP), 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.

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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 for "multi-family housing facilities" or "multi-family housing units" which meet the definition of a project under Tennessee Code Annotated, Section 48-101-301 upon a finding by the Board that such payments are deemed to be in furtherance of the Board's public purpose which determination shall be conclusive; and

WHEREAS, Alco Woodlawn Partners, LP (the "Company") is proposing investment in and the provision of additional services in connection with 163 unit affordable housing community serving low income families with incomes below sixty (60%) percent of Area Median Income (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 Tennessee Code Annotated, Section 48-101-312(b);

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that the City Council does hereby find that the “multi-family housing facilities” 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

BE IT FURTHER RESOLVED that, having made such a finding in this instance, the City Council does hereby delegate to the Board the authority to negotiate and accept payments in lieu of taxes from the Company, it being further noted that this delegation is for this purpose and this project only; and

FURTHER RESOLVED 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 shall take effect from and after it’s a passage, the public welfare requiring it.

ADOPTED: October 17, 2017

V3

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

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the "Board"); Alco Woodlawn Partners, L.P., 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").

**W I T N E S S E T H:**

**WHEREAS**, the Company is contemplating the improvement of the properities located at 2300 Wilson Street, 1101 Arlington Ave., and 2300 Windsor Street in Chattanooga, Hamilton County, Tennessee, including the renovation, equipping and furnishing of a multifamily, low income housing tax credit apartment project with approximately 163 one, two and three 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 a resolution adopted by the City, acting through its duly elected Council, which resolution delegates to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions; 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 and the City Treasurer, 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 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. According to Chapter 0600-10 of the Rules of the Tennessee State Board of Equalization, following renovation of the Property, such appraisal shall consist of two components: (i) the restricted use component ( the "Restricted Income Value") which will be based on the Assessor's valuation of the Project's operating income, and (ii) the LIHTC subsidy component (the "LIHTC Subsidy Value") which will be based on the Assessor's valuation of the LIHTC subsidy provided to the Project by the Tennessee Housing Development Agency (collectively the Restricted Income Value and the LIHTC Subsidy Value are hereinafter referred to as the "Renovated Project Value"). 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. 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 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.

(a) Payments for Unrenovated Project. For each of the years 2018 through 2032 (the "Real Property Tax Abatement Period"), the Company shall make In Lieu 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 2016 (the "Base Year") on the value of the Project, which value is \$3,667,200 (the "Unrenovated Project Value"). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the Unrenovated Project Value exclusive of the improvements made in connection with the renovation of the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Payments for Renovated Project.

(i) Applicability to the County. The provisions set forth in subsection (a), immediately above, and the provisions of paragraphs (ii) – (iv), immediately below, shall only apply to the County if and to the extent authorized by a duly adopted resolution of the County Commission of the County. Unless and until the County Commission authorizes the reduced In Lieu Payments set forth below, the Company shall make In Lieu Payments to the County in an amount equal to the County property taxes that would be due on the Property if it were subject to taxation.

(ii) School Tax on Renovations. After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated 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") based upon the increase in the Renovated Project Value over the Unrenovated Project Value (the "Renovation

Value”). The parties acknowledge and agree that the School Portion currently equates to 27.05% 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. The parties further acknowledge that the percentage of the School's Portion will vary as City and County tax rates change.

(iii) County General Fund Tax on Renovations. After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, the Company shall also make In Lieu Payments in the amount equal to the Hamilton County general fund portion of the property taxes that would be due on the improvements to the Property if it were subject to taxation (the “County General Fund Portion”) based upon the increase in the Restricted Income Value over the Unrenovated Project Value. It being the intent that In Lieu Payments shall not be made for the Hamilton County general fund portion of the property taxes that would be due on the LIHTC Subsidy Value of the Project.

(iv) Phase In Period. After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, additional In Lieu Payments on the improvements will be as follows:

Year	City General Fund <sup>(1)</sup>	County General Fund <sup>(1)(2)</sup>
	Renovation Value	LIHTC Subsidy Value
2018 – 2027	0%	0%
2028	20%	20%
2029	40%	40%
2030	60%	60%
2031	80%	80%
2032	100%	100%

<sup>(1)</sup> – The above percentages refer to the percent of the amount of taxes that would have been payable on the value if it were subject to property taxes.

<sup>(2)</sup> – These percentages will only apply if and to the extent approved by the County Commission of Hamilton County, Tennessee. In the event that no such resolution is adopted, the applicable percentage shall be 100%.



As noted above, during such years 2018 to 2032 (the "Improvements Tax Abatement Period"; the Improvements Tax Abatement and the Real Property Tax Abatement Period collectively called the "Tax Abatement Period"), the Company shall continue to pay the School Portion attributable to the Hamilton County Schools and the General Fund Portion attributable to the County general fund. For any periods before or after the Tax Abatement 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.

5. Penalties and Late Charges; Affordability Requirement. 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 and 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) The Company covenants as follows:

(i) The Project will be completed within twenty-four (24) months following the date of this Agreement.

(ii) After completion of the Project and during the Tax Abatement Period, 100% of the dwelling units in the Project will be set aside for occupancy by households 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 (the "Affordability Requirement").

(iii) After completion of the Project and during the Tax Abatement Period, the Project shall be maintained in habitable condition and in compliance with all applicable City and County ordinances and codes.

(iv) Beginning January 1, 2018, the Company shall provide services to tenants residing on the Property in accordance with the Community Benefit Plan set forth in Exhibit "C" (the "Community Benefit Plan")

(d)

(i) If the Company should fail to meet the Affordability Requirement under Section 5(c)(ii) above with respect to the Project and 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 (an "Affordability Event of Default"), the City and the County may then require the Company to pay an additional In Lieu Payment based upon the difference between (i) the In Lieu Payments on the Property owed pursuant to Section 4 during the period of the continuance of such Affordability Event of Default and (ii) the full taxes that would have been payable on the Property if it were subject to property taxes multiplied by a fraction (expressed as a percentage), the denominator of which is the number of dwelling units at the Project subject to the Affordability Requirement and the numerator of which is the number of dwelling units that are not occupied by or available for occupancy by households 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. The County and the City shall look solely to the Company for any repayment obligations.

(ii) If the Company should fail to spend the annual budget for services under the Community Benefit Plan, the City and the County (if applicable) may then require the Company to pay an additional In Lieu Payment based upon the difference between (i) the Company's actual expenditures on services set forth in the Community Benefit Plan; and (ii) the annual budget for the Company's expenditures set forth in the Community Benefit Plan.

(iii) In no event shall the Company be required to pay more in In Lieu Payments than the Company would have paid in property taxes, if the Property were subject to property taxes.

6. Disbursements by the Treasurer and Trustee. 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. 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. 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 §48-101-302.

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 the City, the County and the Board, 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(c). Beginning on February 15, 2019 and on or before February 15 of each calendar year thereafter during this Agreement, the Company will also provide the City, the County and the Board with evidence of the Company's expenditures under the Community Benefit Plan. An independent audit of these certifications 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. 11<sup>th</sup> 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. Robert D. Hyde, Alco Woodlawn Partners, L.P., 35 Union Ave., Suite 200, Memphis, TN 38103; 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, 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.

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.

(a) 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 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.

(b) Notwithstanding the provisions of subsection (a), above, and notwithstanding any other provision in this Agreement or the Lease to the contrary, the Company may make a collateral assignment of all or any portion of its interests in this Agreement, the Lease and the Project for the benefit of one or more banks or other lenders that, from time to time, provide financing to the Company. Nothing in this Agreement or the Lease shall in any way restrict any sale or transfer of the leasehold interest and other interests of the Company in the Project pursuant to a judicial or non-judicial foreclosure sale as a result of the exercise of any one or more lender's rights under the applicable loan documents. The City, the County and the Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the City, County or Board, in consummating any financing for the Company that involves a pledge or assignment of the Company's interests in this Agreement, the Lease or the Project. Without limitation of the foregoing, the Mayor of the City, the Mayor of the County, and the Chairman of the Board, or any of their respective designees, are authorized, upon the Company's request, enter into or consent to such documents as are necessary to consummate such financing including, without limitation, the "HUD Rider to Security Instrument" attached hereto as Exhibit "B" as well as additional consents to assignment, deeds of trust, estoppel certificates, subordination and non-disturbance agreements, affidavits and certificates, provided that any such documents are expressly non-recourse to the City, County and Board beyond the Board's interest in the Project.

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

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole 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**

**AS-SURVEYD DESCRIPTION**

**Tract One**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being described in Deed book 2003, Page 763 Register's Office of Hamilton County (R.O.H.C.) known as Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 13, and Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 16, together with an abandoned alley, City of Chattanooga Ordinance No. 6324 an part of abandoned Taylor Street, City of Chattanooga Ordinance No. 5180 Woodlawn Subdivision Plat Book 2, Page 3, R.O.H.C. To find the point of beginning begin at the Northeast intersection of Arlington Avenue and Windsor Street, a 50 foot dedicated right of way North 66 degrees 12 minutes 14 seconds West 293.16 feet to a rebar corner; thence leaving said right of way and with and along the centerline of Taylor Street abandoned aforementioned also being the East line of Estate of Milton Vincent, Deed Book 8971, Page 694 (R.O.H.C.) North 23 degrees 58 minutes 51 seconds East 398.76 feet to an iron pipe corner; thence leaving said East line and with and along the South line of Marvin and Ronald Berke, Deed Book 5587, Page 395 R.O.H.C. and the South line of Tract No. 2, Woodlawn Apartments South 66 degrees 26 minutes 35 seconds East being the Southeast corner of Marvin and Ronald Berke aforementioned a total of 292.50 feet to an iron pipe corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 399.98 feet to a spike corner and the point of beginning. Said parcel contains 2.68 acres.

**Tract Two**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being a part of Deed 1884, page 246 Register's Office of Hamilton County (R.O.H.C.). To find the true point of beginning begin at the remote point of beginning which is the northeast corner intersection of Windsor Street an Arlington Avenue; thence with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way North 23 degrees 53 minutes 33 seconds East 399.98 feet to an iron pipe corner and the true point of beginning; thence with and along the North line of Lot 1, Block 13, Woodlawn Subdivision, Plat book 2, Page 3, R.O.H.C., North 66 degrees 26 minutes 35 seconds West 260.00 feet to a point; thence leaving said North line and with and along the East line of Marvin and Ronald Berke, Deed Book 5587, page 395 R.O.H.C. with a series of calls and distances as follows: North 18 degrees 06 minutes 05 seconds East 95.12 feet to a point; thence North 03 degrees 39 minutes 00 seconds East 111.00 feet to a point; thence North 17 degrees 39 minutes 00 seconds East 90.00 feet to a point; thence North 11 degrees 24 minutes 00 seconds East 66.40 feet to an Iron pipe corner and a point of curve; thence with a curve measured to the left an arc distance of 56.8 feet to a point of tangent, said curve has a radius of 42.2 feet a tangent of 33.63 feet and is subtended by a chord North 27 degrees 09 minutes 33 seconds West 52.06 feet; thence North 65 degrees 33 minutes 00 seconds 57.80 feet to a point; thence North 20 degrees 49 minutes 48 seconds East 359.51 feet to a rebar corner; thence leaving said East and with and along the South line of Wilson Street, a 50 foot public dedicated right of way South 66 degrees 16 minutes 19 seconds East 278.00 feet to a rebar corner; thence leaving said South right of way and with and along the West line of Lot 4, Fred W. Licker, Jr., (not recorded) South 23 degrees 53 minutes 00 seconds West 150.00 feet to a rebar corner; thence leaving said West line and with and along the South line of Lots 1 thru 4, Fred W. Licker, Jr. (not recorded) South 66 degrees 25 minutes 00 seconds East 172.00 feet to a rebar corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 595.90 feet to the true point of beginning. Said Tract 2 contains 5.70 acres.

#### AS-SURVEYD DESCRIPTION

##### Tract Three

A parcel of land situated in Chattanooga, Hamilton County, Tennessee as described in Deed Book 1899, page 376 Register's Office at Hamilton County (R.O.H.C.). Said parcel is known as Lots 1, 2, 3 and 4, Block 10, and Lots 1, 2, 3 and part of Lot 4, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C., together with abandoned portion of Arlington Avenue and part of abandoned Taylor Street. To find the point of beginning begin at the Northwest corner of an unopened 10 foot alley and the South right of way of Windsor Street; thence with and along the West line of said unopened alley South 23 degrees 51 minutes 37 seconds West 199.30 feet to a rebar corner; thence leaving said West line and with and along the North line of Lot 5, Block 10 and Lot 5, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C. and the right of way of Arlington Avenue North 66 degrees 10 minutes 20 seconds West 276.00 feet to a rebar corner; thence leaving said South line North 23 degrees 24 minutes 21 seconds East 7.97 feet to a rebar corner; thence continuing with and along the North line North 66 degrees 02 minutes 44 seconds West 89.00 feet to a rebar corner of Taylor Street abandoned; thence with and along the center line of Taylor Street abandoned North 23 degrees 52 minutes 23 seconds East 190.98 feet to a rebar corner; thence leaving said line and with and along the South line of Windsor Street, a 50 foot public dedicated right of way South 66 degrees 11 minutes 49 seconds East 365.00 feet to a spike corner and the point of beginning. Said parcel contains 1.65 acres.

#### PERSONAL PROPERTY

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

**EXHIBIT "B"**

**RIDER TO SECURITY INSTRUMENT  
FEE JOINDER**

**WARNING:** Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30; and 2 C.F.R. Parts 180 and 2424.

## **RIDER TO SECURITY INSTRUMENT FEE JOINDER**

*[Instructions: When using this form, amend the first paragraph of the Security Instrument to include the Ground Lessor as an accommodating "Joinder Party" to ensure proper indexing against the Ground Lessor among the land records.]*

This Rider ("Rider") is attached to and amends the Security Instrument entered into between \_\_\_\_\_ ("Borrower") and \_\_\_\_\_ ("Lender"), dated as of \_\_\_\_\_.

*[For a Mortgage OR Deed to Secure Debt, insert the following:]*

[This Rider is provided to secure to Lender the repayment of the Indebtedness, and the performance of the covenants and agreements of Borrower and Ground Lessor contained in the Loan Documents, Borrower and Ground Lessor mortgage, warrant, grant, convey and assign to Lender the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

**OR**

*[For a Deed of Trust, insert the following:]*

[Borrower and Ground Lessor, in consideration of the Indebtedness and the trust created by this Security Instrument, irrevocably grant, convey and assign to Trustee, in trust, with power of sale, the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

To the extent any provisions of this Rider conflict with any provisions in the body of the Security Instrument to which this Rider is attached, the provisions of this Rider shall prevail. Any terms in the body of the Security Instrument not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Security Instrument to which this Rider is attached, and for valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge and agree, and to induce the Lender to make the Loan to Borrower described in the Security Instrument, Borrower and Ground Lessor covenant and agree as follows:

### **1. Definitions**

The following terms shall be added to Section 1 (Definitions) of the Security Instrument:

- (a) **"Fee Estate"** means that fee simple interest in the Land, presently held by Ground Lessor.
- (b) **"Ground Lease"** means that lease attached as Exhibit [ ], pursuant to which Borrower leases the Land from Ground Lessor, as such lease may be amended, modified, supplemented, renewed, and extended, but only with prior written approval of Lender and HUD.
- (c) **"Ground Lessor"** means that landlord, leasing the Land to Borrower pursuant to the Ground Lease.
- (d) **"Leasehold Estate"** means Borrower's interest in the Land and all other real property, existing pursuant to the Ground Lease, including the following:
  - (i) All rights of Borrower to renew or extend the term of the Ground Lease.
  - (ii) All amounts deposited by Borrower with Ground Lessor under the Ground Lease.
  - (iii) Borrower's right or privilege to terminate, cancel, surrender, modify, or amend the Ground Lease.
  - (iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances and improvements with respect to the Ground Lease.

The following term will be modified in Section 1 (Definitions) of the Security Instrument:

- (e) **"Mortgaged Property"** retains that same definition as provided in the Security Instrument, excepting that it is extended to also include Ground Lessor's present and future right, title and interest in and to those respective items (1-17), identified in the Security Instrument's definition of "Mortgaged Property."

## 2. Ground Lessor Joinder

- (a) Ground Lessor acknowledges and agrees that all rights and interests in the Fee Estate and Leasehold Estate and any indebtedness owed by Borrower (now or later existing) are encumbered by the Security Instrument.
- (b) By its execution and delivery of this Rider, Ground Lessor joins in the Security Instrument with the same intent and consequence as if Ground Lessor were originally a party to the Security Instrument, for the purpose of encumbering the Fee Estate with the lien of the Security Instrument, granting Lender a first priority lien on the Fee Estate, and acknowledging the agreements, covenants and obligations set forth in this Rider are applicable to Ground Lessor.
- (c) Ground Lessor represents that Ground Lessor possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land and, to the extent not owned in fee

by Borrower, the Improvements, free and clear of all Liens, encumbrances and charges except for those otherwise approved by Lender and HUD.

- (d) Ground Lessor represents to Lender and HUD that it has the power, authority and right to execute this Rider and to deed, grant, convey and assign a security interest in Ground Lessor's right, title and interest in the Mortgaged Property pursuant to the terms of this Rider and to keep and observe all of the terms of this Rider to be performed by Ground Lessor under this Rider.
- (e) Ground Lessor agrees that it shall not without the prior written of approval of Lender and HUD:
  - (i) Convey, assign, transfer, pledge, or encumber any part of the Mortgaged Property or any interest in the Mortgaged Property, except as provided for under the Ground Lease.
- (f) Ground Lessor acknowledges all of the following:
  - (i) Lender has not made any representations or warranties to Ground Lessor with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
  - (ii) Ground Lessor assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Ground Lessor wishes to do so.
  - (iii) Lender will have no duty to disclose or report to Ground Lessor any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (g) At any time, after Ground Lessor receives from Lender or HUD a notice of an Event of Default under any of the Loan Documents, Ground Lessor has the right (but will not be obligated) to make any payment, perform any obligation and take any other action that Borrower would have the right to pay, perform or take under the applicable Loan Document which Ground Lessor deems necessary or desirable to cure the Event of Default.
- (h) Ground Lessor acknowledges and agrees that, upon the occurrence of an Event of Default, Lender or Trustee (if applicable) may take such action, without notice or demand, including foreclosure of the Mortgaged Property, as it deems advisable, to protect and enforce its rights against Borrower, Ground Lessor, and in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of this Rider, the Security Instrument, and the other Loan Documents.
- (i) Ground Lessor has no personal liability for the repayment of the Indebtedness or the performance of any of Borrower's obligations under the Loan Documents. Ground Lessor's liability is expressly limited to the Mortgaged Property. However, nothing in



this Rider limits the liability or obligations of Ground Lessor, in its capacity as landlord, under the Ground Lease.

3. Borrower's Acquisition of Fee Estate

- (a) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all parties, including Lender, having an interest in the Ground Lease consent in writing to the merger of estates.
- (b) If Borrower acquires the Fee Estate during any period in which HUD insures or holds the Security Instrument and Note, Borrower must promptly notify HUD and Lender (if applicable) of such acquisition.
- (c) Simultaneously with Borrower's acquisition of the Fee Estate, the lien of this Security Instrument automatically, without the necessity of any further conveyance or recording, continues to cover the Fee Estate and remains prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of this Security Instrument. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's attorneys' fees and costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject or further subject the Fee Estate to the first lien of this Security Instrument or to confirm and ratify such first lien, and must provide to Lender a title insurance policy insuring the lien of this Security Instrument as a first lien on the Fee Estate and the Leasehold Estate, as applicable.

Each signatory below hereby certifies that each of their statements and representations contained in this Rider and all their supporting documentation thereto are true, accurate, and complete, and that each signatory has read and understands the terms of this Rider. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**IN WITNESS WHEREOF**, Borrower and Ground Lessor have signed and delivered this Rider to the Security Instrument or have caused this Rider to the Security Instrument to be signed and delivered by their duly authorized representatives, as a sealed instrument.

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

By: \_\_\_\_\_  
Chairman \_\_\_\_\_

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole general partner

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **RESOLUTION**

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 BAYBERRY APARTMENTS DEVELOPMENT (ALCO WOODLAWN PARTNERS, LP) (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, Bayberry Apartments Development (ALCO Woodlawn Partners, LP) (the "Company"), is considering the renovation 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 has 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 County Commission of Hamilton County will be asked to delegate 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 that are less than the full County taxes the Company would have paid on the Project, but unless and until the County Commission makes such a delegation, the Company shall pay an in lieu of tax payment equal to one hundred percent (100%) of the County property taxes that would have been payable with respect to the Project if the Company owned the Project; 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 I. 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.

Approved this 25 day of October, 2017.

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

By: \_\_\_\_\_

Gregg Gentry

Title: *Vice Chair*

ATTEST:

Dana Perry  
Dana Perry, Secretary

/mem

# Hamilton County Board of County Commissioners

AGENDA

December 20, 2017

ROLL CALL

INVOCATION - **Commissioner Mackey**

**PASSED AGENDA**

PLEDGE TO THE FLAG - **Commissioner Mackey**

Presentation	Bill Kilbride of the Chattanooga Area Chamber of Commerce would like to introduce the new Chamber President Christy Gillenwater to the County Commission. Agenda Session Only December 13, 2017.	
Presentation	Commissioner Sabrena Smedley and Commissioner Chester Bankston will honor Jack Blanco for being an Outstanding Citizen. Agenda Session Only December 13, 2017.	
Minutes	Recessed Meeting - November 29, 2017	Noted for the Record
Minutes	Agenda Session - November 29, 2017	Noted for the Record
Minutes	Regular Meeting - December 6, 2017	Noted for the Record
Report	Order of Designation Planning Commission - Alan Knowles December 11, 2017.	Noted for the Record
Report	Order of Designation Transportation Planning Organization - John Agan December 19, 2017.	Noted for the Record
Report	Trustee Excess Fee Report November 2017	Noted for the Record
Report	Trustee Monthly Report November 2017	Noted for the Record
Res. No. 1217-15	A Resolution to approve and accept applications for notary public positions, the bonds and oaths of notaries previously elected, the oath of Deputy County Clerk, and the oaths of Deputy Sheriffs.	Passed
Res. No. 1217-16	A Resolution making an appropriation to Soddy Daisy Food Bank in the amount of one thousand dollars (\$1,000.00) from General Fund travel discretionary monies, as allotted to District One.	Passed
Res. No. 1217-17	A Resolution approving the expenditure of not to exceed forty one thousand five hundred and seventy-five dollars and sixty cents (\$41,575.60) of bond funds to assist with construction of concrete sidewalk access to the existing baseball and softball fields at East Hamilton Middle/High School.	Passed
Res. No. 1217-18	A Resolution to approve a contract between the Sheriff's Office and the city of Lakesite, in order to provide police services and related vehicle expenses ending June 30, 2020. Additionally the City of Lakesite will reimburse the purchase of two automobiles, to cover the three year period.	Passed
Res. No. 1217-19	A Resolution approving the first amendment to an existing ingress and egress easement agreement pertaining to the Birchwood Construction and Demolition Landfill.	Passed
Res. No. 1217-20	A Resolution to approve the Hamilton County Americans with Disabilities Act (ADA) Transition Plan for Hamilton County Government.	Passed
Res. No. 1217-21	A Resolution to approve the proposal from Aon Risk Consultants, Inc. for Professional Actuarial service for the self-insured on-the-job injury, vehicle liability, other liability, and non-tort programs for the Risk Management Department and authorizing the County Mayor to sign any contracts necessary to implement this Resolution.	Passed

Res. No. 1217-22	A Resolution authorizing the County Mayor to execute a contract with the Tennessee Department of Military and the Tennessee Emergency Management Agency for a 2017 Homeland Security Grant with a period of 09/01/2017 through 04/30/2020 and amending the budget of the Emergency Services Department by adding \$171,670.63 to revenues and expenditures.	Passed
Res. No. 1217-23	A Resolution authorizing the Emergency Services Department to apply for a Hazardous Materials Emergency Preparedness grant with the Tennessee Department of Military and the Tennessee Emergency Management Agency for a 2018 Hazardous Materials Emergency Preparedness grant with a period beginning January 1, 2018 and ending August 15, 2018 and allowing the Mayor to execute the contract upon receipt of the grant.	Passed
Res. No. 1217-24	A Resolution accepting the proposals of Dealers Auto Auction, LLC and Compass Auctions & Real Estate, LLC to provide vehicle auction services for Hamilton County beginning January 1, 2018 for a contract period of five (5) years with the option for up to three (3) additional one (1) year renewals and authorizing the County Mayor to sign any contracts necessary to implement this Resolution.	Passed
Res. No. 1217-25	An initial Resolution of the legislative body of Hamilton County, Tennessee authorizing the issuance of interest-bearing general obligation bonds of Hamilton County, Tennessee, in an aggregate principal amount not to exceed \$235,000,000, to be issued in one or more series, to finance or refinance certain school projects and various other public works projects in Hamilton County pursuant to Section 9-21-101, et. seq., of the Tennessee Code Annotated.	Passed
Res. No. 1217-26A	A Resolution to rezone from A-1 Agricultural District & C-2 Local Business Commercial District to C-2 Local Business Commercial District, properties located at 7912 & 7916 Bill Reed Road.	No Action Taken
Res. No. 1217-26B	A Resolution to rezone from A-1 Agricultural District & C-2 Local Business Commercial District to C-2 Local Business Commercial District, properties located at 7912 & 7916 Bill Reed Road.	Resolution Deferred to Recessed Meeting - January 10, 2018
Res. No. 1217-27	A Resolution to amend the Hamilton County Zoning Regulations, Article II. Definitions, Article IV. R-3 Multi-family Residential District, C-2 Local Business Commercial District Regulations, C-3 General Business Commercial District Regulations, and Article VI. Section 400, Special Permits by Hamilton County Commission to add as a Special Permit Assisted Care Living Facility.	Passed
Res. No. 1217-28	A Resolution ratifying the purchase of gasoline and diesel fuel for the period of November 1, 2017, through November 30, 2017, and to authorize the County Mayor to sign any contracts necessary to implement this Resolution.	Passed
Res. No. 1217-29	A Resolution accepting the bid of Capitol Wholesale Fence Co. for one (1) year contract unit pricing, with the option to renew for one (1) additional one (1) year term, beginning January 1, 2018, through December, 31, 2018, for fencing and materials for the Parks and Recreation Department and authorizing the County Mayor to sign any contracts necessary to implement this Resolution.	Passed
Res. No. 1217-30	A Resolution to make certain findings relating to the Alco Woodlawn Partners, L.P., to delegate certain authority to the Health, Educational and Housing Facility Board of the City of Chattanooga, and to authorize the County Mayor, County Assessor, and County Trustee to enter into and execute an agreement for payments in lieu of ad valorem taxes.	Passed



**ANNOUNCEMENTS**

**DELEGATIONS ON MATTERS OTHER THAN ZONING**



## Hamilton County Board of Commissioners **RESOLUTION**

No. 1217-30

**A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE ALCO WOODLAWN PARTNERS, L.P., TO DELEGATE CERTAIN AUTHORITY TO THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, AND TO AUTHORIZE THE COUNTY MAYOR, COUNTY ASSESSOR, AND COUNTY TRUSTEE TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.**

**WHEREAS**, pursuant to Tennessee Code Annotated, Section 7-53-305(b) the County of Hamilton (the "County") is permitted to delegate to The Health, Educational and Housing 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 County that such payments are deemed to be in furtherance of the Board's public purposes; and

**WHEREAS**, Alco Woodlawn Partners, L.P. (the "Company") is contemplating the improvement of the multi-family residential properties located at 2300 Wilson Street, 1101 Arlington Avenue, and 2300 Windsor Street (the "Developer") to cause the improvement of certain real property in Chattanooga, Hamilton County, Tennessee, including the renovation, equipping and furnishing of a low income housing tax credit apartment project with approximately 163 one, two and three bedroom units (collectively, the "Project"); and because of the substantial economic benefits to the City of Chattanooga and Hamilton County resulting from the Project, has asked the Board and the County Commission to approve payments in lieu of ad valorem taxes; and

**WHEREAS,** the Commission 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 53 of Title 7 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 Project is in the best interest of the County, and that payments in lieu of ad valorem taxes derived therefrom, with no reduction in the amount that the County would normally receive in ad valorem taxes during the term of the attached Agreement, 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, it being further noted that this delegation is for this purpose and this project only; and

That the County Mayor, County Assessor, and County Trustee are 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 they 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 20, 2017

\_\_\_\_\_  
Date

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

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the "Board"); Alco Woodlawn Partners, L.P., 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").

**W I T N E S S E T H:**

**WHEREAS**, the Company is contemplating the improvement of the properites located at 2300 Wilson Street, 1101 Arlington Ave., and 2300 Windsor Street in Chattanooga, Hamilton County, Tennessee, including the renovation, equipping and furnishing of a multifamily, low income housing tax credit apartment project with approximately 163 one, two and three 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 a resolution adopted by the City, acting through its duly elected Council, which resolution delegates to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions; 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 and the City Treasurer, 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 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. According to Chapter 0600-10 of the Rules of the Tennessee State Board of Equalization, following renovation of the Property, such appraisal shall consist of two components: (i) the restricted use component ( the "Restricted Income Value") which will be based on the Assessor's valuation of the Project's operating income, and (ii) the LIHTC subsidy component (the "LIHTC Subsidy Value") which will be based on the Assessor's valuation of the LIHTC subsidy provided to the Project by the Tennessee Housing Development Agency (collectively the Restricted Income Value and the LIHTC Subsidy Value are hereinafter referred to as the "Renovated Project Value"). 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. 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 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.

(a) Payments for Unrenovated Project (not applicable to County – see Section 4(b)(i)). For each of the years 2018 through 2032 (the "Real Property Tax Abatement Period"), the Company shall make In Lieu 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 2016 (the "Base Year") on the value of the Project, which value is \$3,667,200 (the "Unrenovated Project Value"). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the Unrenovated Project Value exclusive of the improvements made in connection with the renovation of the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Payments for Renovated Project.

(i) Applicability to the County; 100% In Lieu of Tax Payment to County. Notwithstanding any provisions in this Agreement to the contrary, the Company shall make In Lieu Payments to the County equal to the County property taxes that would be due on the Property if it were subject to taxation. The parties acknowledge that the provisions set forth in subsection (a), immediately above, and the provisions of paragraphs (ii) – (iv), immediately below, were developed and presented to the City and the Board in contemplation of a request for reduced In Lieu Payments from the County. Due to timing considerations for the Project, the Company has elected to proceed without making a request for reduced In Lieu Payments to the County. The Company shall make In Lieu Payments to the County in an amount equal to the County property taxes that would be due on the Property if it were subject to taxation.

(ii) School Tax on Renovations (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated 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") based upon the increase in the Renovated Project Value over the Unrenovated Project Value (the "Renovation Value"). The parties acknowledge and agree that the School Portion currently equates to [27.05%] 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. The parties further acknowledge that the percentage of the School's Portion will vary as City and County tax rates change.

(iii) County General Fund Tax on Renovations (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, the Company shall also make In Lieu Payments in the amount equal to the Hamilton County general fund portion of the property taxes that would be due on the improvements to the Property if it were subject to taxation (the "County General Fund Portion") based upon the increase in the Restricted Income Value over the Unrenovated Project Value. It being the intent that In Lieu Payments shall not be made for the Hamilton County general fund portion of the property taxes that would be due on the LIHTC Subsidy Value of the Project.

(iv) Phase In Period (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, additional In Lieu Payments on the improvements will be as follows:



Year	City General Fund <sup>(1)</sup>	County General Fund <sup>(1) (2)</sup>
	Renovation Value	LIHTC Subsidy Value
2018 – 2027	0%	0%
2028	20%	20%
2029	40%	40%
2030	60%	60%
2031	80%	80%
2032	100%	100%

<sup>(1)</sup> – The above percentages refer to the percent of the amount of taxes that would have been payable on the value if it were subject to property taxes.

<sup>(2)</sup> – These percentages will only apply if and to the extent approved by the County Commission of Hamilton County, Tennessee. In the event that no such resolution is adopted, the applicable percentage shall be 100%.

As noted above, during such years 2018 to 2032 (the "Improvements Tax Abatement Period"; the Improvements Tax Abatement and the Real Property Tax Abatement Period collectively called the "Tax Abatement Period"), the Company shall continue to pay the School Portion attributable to the Hamilton County Schools and the General Fund Portion attributable to the County general fund. For any periods before or after the Tax Abatement 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.

5. Penalties and Late Charges; Affordability Requirement. 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 and 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) The Company covenants as follows:

(i) The Project will be completed within twenty-four (24) months following the date of this Agreement.

(ii) After completion of the Project and during the Tax Abatement Period, 100% of the dwelling units in the Project will be set aside for occupancy by households 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 (the "Affordability Requirement").

(iii) After completion of the Project and during the Tax Abatement Period, the Project shall be maintained in habitable condition and in compliance with all applicable City and County ordinances and codes.

(iv) Beginning January 1, 2018, the Company shall provide services to tenants residing on the Property in accordance with the Community Benefit Plan set forth in Exhibit "C" (the "Community Benefit Plan")

(d)

(i) If the Company should fail to meet the Affordability Requirement under Section 5(c)(ii) above with respect to the Project and 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 (an "Affordability Event of Default"), the City and the County may then require the Company to pay an additional In Lieu Payment based upon the difference between (i) the In Lieu Payments on the Property owed pursuant to Section 4 during the period of the continuance of such Affordability Event of Default and (ii) the full taxes that would have been payable on the Property if it were subject to property taxes multiplied by a fraction (expressed as a percentage), the denominator of which is the number of dwelling units at the Project subject to the Affordability Requirement and the numerator of which is the number of dwelling units that are not occupied by or available for occupancy by households 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. The County and the City shall look solely to the Company for any repayment obligations.

(ii) If the Company should fail to spend the annual budget for services under the Community Benefit Plan, the City and the County (if applicable) may then

require the Company to pay an additional In Lieu Payment based upon the difference between (i) the Company's actual expenditures on services set forth in the Community Benefit Plan; and (ii) the annual budget for the Company's expenditures set forth in the Community Benefit Plan.

(iii) In no event shall the Company be required to pay more in In Lieu Payments than the Company would have paid in property taxes, if the Property were subject to property taxes.

6. Disbursements by the Treasurer and Trustee. 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. 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. 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 §48-101-302.

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 the City, the County and the Board, 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(c). Beginning on February 15, 2019 and on or before February 15 of each calendar year thereafter during this Agreement, the Company will also provide the City, the County and the Board with evidence of the Company's expenditures under the Community Benefit Plan. An independent audit of these certifications 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. 11<sup>th</sup> 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. Robert D. Hyde, Alco Woodlawn Partners, L.P., 35 Union Ave., Suite 200, Memphis, TN 38103; 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, 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.

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.

(a) 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 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.

(b) Notwithstanding the provisions of subsection (a), above, and notwithstanding any other provision in this Agreement or the Lease to the contrary, the Company may make a collateral assignment of all or any portion of its interests in this Agreement, the Lease and the Project for the benefit of one or more banks or other lenders that, from time to time, provide financing to the Company. Nothing in this Agreement or the Lease shall in any way restrict any sale or transfer of the leasehold interest and other interests of the Company in the Project pursuant to a judicial or non-judicial foreclosure sale as a result of the exercise of any one or more lender's rights under the applicable loan documents. The City, the County and the Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the City, County or Board, in consummating any financing for the Company that involves a pledge or assignment of the Company's interests in this Agreement, the Lease or the Project. Without limitation of the foregoing, the Mayor of the City, the Mayor of the County, and the Chairman of the Board, or any of their respective designees, are



authorized, upon the Company's request, enter into or consent to such documents as are necessary to consummate such financing including, without limitation, the "HUD Rider to Security Instrument" attached hereto as Exhibit "B" as well as additional consents to assignment, deeds of trust, estoppel certificates, subordination and non-disturbance agreements, affidavits and certificates, provided that any such documents are expressly non-recourse to the City, County and Board beyond the Board's interest in the Project.

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

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole 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**

**AS-SURVEYD DESCRIPTION**

**Tract One**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being described in Deed book 2003, Page 763 Register's Office of Hamilton County (R.O.H.C.) known as Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 13, and Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 16, together with an abandoned alley, City of Chattanooga Ordinance No. 6324 an part of abandoned Taylor Street, City of Chattanooga Ordinance No. 5180 Woodlawn Subdivision Plat Book 2, Page 3, R.O.H.C. To find the point of beginning begin at the Northeast intersection of Arlington Avenue and Windsor Street, a 50 foot dedicated right of way North 66 degrees 12 minutes 14 seconds West 293.16 feet to a rebar corner; thence leaving said right of way and with and along the centerline of Taylor Street abandoned aforementioned also being the East line of Estate of Milton Vincent, Deed Book 8971, Page 694 (R.O.H.C.) North 23 degrees 58 minutes 51 seconds East 398.76 feet to an iron pipe corner; thence leaving said East line and with and along the South line of Marvin and Ronald Berke, Deed Book 5587, Page 395 R.O.H.C. and the South line of Tract No. 2, Woodlawn Apartments South 66 degrees 26 minutes 35 seconds East being the Southeast corner of Marvin and Ronald Berke aforementioned a total of 292.50 feet to an iron pipe corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 399.98 feet to a spike corner and the point of beginning. Said parcel contains 2.68 acres.

**Tract Two**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being a part of Deed 1884, page 246 Register's Office of Hamilton County (R.O.H.C.). To find the true point of beginning begin at the remote point of beginning which is the northeast corner intersection of Windsor Street an Arlington Avenue; thence with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way North 23 degrees 53 minutes 33 seconds East 399.98 feet to an iron pipe corner and the true point of beginning; thence with and along the North line of Lot 1, Block 13, Woodlawn Subdivision, Plat book 2, Page 3, R.O.H.C., North 66 degrees 26 minutes 35 seconds West 280.00 feet to a point; thence leaving said North line and with and along the East line of Marvin and Ronald Berke, Deed Book 5587, page 395 R.O.H.C. with a series of calls and distances as follows: North 18 degrees 06 minutes 05 seconds East 95.12 feet to a point; thence North 03 degrees 39 minutes 00 seconds East 111.00 feet to a point; thence North 17 degrees 39 minutes 00 seconds East 90.00 feet to a point; thence North 11 degrees 24 minutes 00 seconds East 66.40 feet to an iron pipe corner and a point of curve; thence with a curve measured to the left an arc distance of 56.8 feet to a point of tangent, said curve has a radius of 42.2 feet a tangent of 33.63 feet and is subtended by a chord North 27 degrees 09 minutes 33 seconds West 52.06 feet; thence North 65 degrees 33 minutes 00 seconds 57.80 feet to a point; thence North 20 degrees 49 minutes 48 seconds East 359.51 feet to a rebar corner; thence leaving said East and with and along the South line of Wilson Street, a 50 foot public dedicated right of way South 66 degrees 16 minutes 19 seconds East 278.00 feet to a rebar corner; thence leaving said South right of way and with and along the West line of Lot 4, Fred W. Licker, Jr., (not recorded) South 23 degrees 53 minutes 00 seconds West 150.00 feet to a rebar corner; thence leaving said West line and with and along the South line of Lots 1 thru 4, Fred W. Licker, Jr. (not recorded) South 66 degrees 25 minutes 00 seconds East 172.00 feet to a rebar corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 595.90 feet to the true point of beginning. Said Tract 2 contains 5.70 acres.

#### AS-SURVEYD DESCRIPTION

##### Tract Three

A parcel of land situated in Chattanooga, Hamilton County, Tennessee as described in Deed Book 1899, page 378 Register's Office of Hamilton County (R.O.H.C.). Said parcel is known as Lots 1, 2, 3 and 4, Block 10, and Lots 1, 2, 3 and part of Lot 4, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C., together with abandoned portion of Arlington Avenue and part of abandoned Taylor Street. To find the point of beginning begin at the Northwest corner of an unopened 10 foot alley and the South right of way of Windsor Street; thence with and along the West line of said unopened alley South 23 degrees 51 minutes 37 seconds West 199.30 feet to a rebar corner; thence leaving said West line and with and along the North line of Lot 5, Block 10 and Lot 5, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C. and the right of way of Arlington Avenue North 66 degrees 10 minutes 20 seconds West 276.00 feet to a rebar corner; thence leaving said South line North 23 degrees 24 minutes 21 seconds East 7.97 feet to a rebar corner; thence continuing with and along the North line North 66 degrees 02 minutes 44 seconds West 89.00 feet to a rebar corner of Taylor Street abandoned; thence with and along the center line of Taylor Street abandoned North 23 degrees 52 minutes 23 seconds East 190.98 feet to a rebar corner; thence leaving said line and with and along the South line of Windsor Street, a 50 foot public dedicated right of way South 66 degrees 11 minutes 49 seconds East 365.00 feet to a spike corner and the point of beginning. Said parcel contains 1.65 acres.

#### PERSONAL PROPERTY

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

**EXHIBIT "B"**

**RIDER TO SECURITY INSTRUMENT  
FEE JOINDER**

**WARNING:** Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30; and 2 C.F.R. Parts 180 and 2424.

## **RIDER TO SECURITY INSTRUMENT FEE JOINDER**

*[Instructions: When using this form, amend the first paragraph of the Security Instrument to include the Ground Lessor as an accommodating "Joinder Party" to ensure proper indexing against the Ground Lessor among the land records.]*

This Rider ("Rider") is attached to and amends the Security Instrument entered into between \_\_\_\_\_ ("Borrower") and \_\_\_\_\_ ("Lender"), dated as of \_\_\_\_\_.

*[For a Mortgage OR Deed to Secure Debt, insert the following:]*

[This Rider is provided to secure to Lender the repayment of the Indebtedness, and the performance of the covenants and agreements of Borrower and Ground Lessor contained in the Loan Documents, Borrower and Ground Lessor mortgage, warrant, grant, convey and assign to Lender the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

**OR**

*[For a Deed of Trust, insert the following:]*

[Borrower and Ground Lessor, in consideration of the Indebtedness and the trust created by this Security Instrument, irrevocably grant, convey and assign to Trustee, in trust, with power of sale, the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

To the extent any provisions of this Rider conflict with any provisions in the body of the Security Instrument to which this Rider is attached, the provisions of this Rider shall prevail. Any terms in the body of the Security Instrument not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Security Instrument to which this Rider is attached, and for valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge and agree, and to induce the Lender to make the Loan to Borrower described in the Security Instrument, Borrower and Ground Lessor covenant and agree as follows:

### **1. Definitions**

The following terms shall be added to Section 1 (Definitions) of the Security Instrument:

- (a) **"Fee Estate"** means that fee simple interest in the Land, presently held by Ground Lessor.
- (b) **"Ground Lease"** means that lease attached as Exhibit [ ], pursuant to which Borrower leases the Land from Ground Lessor, as such lease may be amended, modified, supplemented, renewed, and extended, but only with prior written approval of Lender and HUD.
- (c) **"Ground Lessor"** means that landlord, leasing the Land to Borrower pursuant to the Ground Lease.
- (d) **"Leasehold Estate"** means Borrower's interest in the Land and all other real property, existing pursuant to the Ground Lease, including the following:
  - (i) All rights of Borrower to renew or extend the term of the Ground Lease.
  - (ii) All amounts deposited by Borrower with Ground Lessor under the Ground Lease.
  - (iii) Borrower's right or privilege to terminate, cancel, surrender, modify, or amend the Ground Lease.
  - (iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances and improvements with respect to the Ground Lease.

The following term will be modified in Section 1 (Definitions) of the Security Instrument:

- (e) **"Mortgaged Property"** retains that same definition as provided in the Security Instrument, excepting that it is extended to also include Ground Lessor's present and future right, title and interest in and to those respective items (1-17), identified in the Security Instrument's definition of "Mortgaged Property."

## 2. Ground Lessor Joinder

- (a) Ground Lessor acknowledges and agrees that all rights and interests in the Fee Estate and Leasehold Estate and any indebtedness owed by Borrower (now or later existing) are encumbered by the Security Instrument.
- (b) By its execution and delivery of this Rider, Ground Lessor joins in the Security Instrument with the same intent and consequence as if Ground Lessor were originally a party to the Security Instrument, for the purpose of encumbering the Fee Estate with the lien of the Security Instrument, granting Lender a first priority lien on the Fee Estate, and acknowledging the agreements, covenants and obligations set forth in this Rider are applicable to Ground Lessor.
- (c) Ground Lessor represents that Ground Lessor possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land and, to the extent not owned in fee

by Borrower, the Improvements, free and clear of all Liens, encumbrances and charges except for those otherwise approved by Lender and HUD.

- (d) Ground Lessor represents to Lender and HUD that it has the power, authority and right to execute this Rider and to deed, grant, convey and assign a security interest in Ground Lessor's right, title and interest in the Mortgaged Property pursuant to the terms of this Rider and to keep and observe all of the terms of this Rider to be performed by Ground Lessor under this Rider.
- (e) Ground Lessor agrees that it shall not without the prior written of approval of Lender and HUD:
  - (i) Convey, assign, transfer, pledge, or encumber any part of the Mortgaged Property or any interest in the Mortgaged Property, except as provided for under the Ground Lease.
- (f) Ground Lessor acknowledges all of the following:
  - (i) Lender has not made any representations or warranties to Ground Lessor with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
  - (ii) Ground Lessor assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Ground Lessor wishes to do so.
  - (iii) Lender will have no duty to disclose or report to Ground Lessor any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (g) At any time, after Ground Lessor receives from Lender or HUD a notice of an Event of Default under any of the Loan Documents, Ground Lessor has the right (but will not be obligated) to make any payment, perform any obligation and take any other action that Borrower would have the right to pay, perform or take under the applicable Loan Document which Ground Lessor deems necessary or desirable to cure the Event of Default.
- (h) Ground Lessor acknowledges and agrees that, upon the occurrence of an Event of Default, Lender or Trustee (if applicable) may take such action, without notice or demand, including foreclosure of the Mortgaged Property, as it deems advisable, to protect and enforce its rights against Borrower, Ground Lessor, and in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of this Rider, the Security Instrument, and the other Loan Documents.
- (i) Ground Lessor has no personal liability for the repayment of the Indebtedness or the performance of any of Borrower's obligations under the Loan Documents. Ground Lessor's liability is expressly limited to the Mortgaged Property. However, nothing in



this Rider limits the liability or obligations of Ground Lessor, in its capacity as landlord, under the Ground Lease.

3. Borrower's Acquisition of Fee Estate

- (a) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all parties, including Lender, having an interest in the Ground Lease consent in writing to the merger of estates.
- (b) If Borrower acquires the Fee Estate during any period in which HUD insures or holds the Security Instrument and Note, Borrower must promptly notify HUD and Lender (if applicable) of such acquisition.
- (c) Simultaneously with Borrower's acquisition of the Fee Estate, the lien of this Security Instrument automatically, without the necessity of any further conveyance or recording, continues to cover the Fee Estate and remains prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of this Security Instrument. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's attorneys' fees and costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject or further subject the Fee Estate to the first lien of this Security Instrument or to confirm and ratify such first lien, and must provide to Lender a title insurance policy insuring the lien of this Security Instrument as a first lien on the Fee Estate and the Leasehold Estate, as applicable.

Each signatory below hereby certifies that each of their statements and representations contained in this Rider and all their supporting documentation thereto are true, accurate, and complete, and that each signatory has read and understands the terms of this Rider. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**IN WITNESS WHEREOF**, Borrower and Ground Lessor have signed and delivered this Rider to the Security Instrument or have caused this Rider to the Security Instrument to be signed and delivered by their duly authorized representatives, as a sealed instrument.

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

By: \_\_\_\_\_  
Chairman \_\_\_\_\_

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole general partner

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT "C"**

### **COMMUNITY BENEFIT PROGRAM – BAYBERRY APARTMENTS**

#### **A. Community Benefit Program**

During the term of the Agreement, the Company will provide certain community benefits to residents of Bayberry Apartments, selected from the categories identified below. Each year, the Company will establish an annual budget of at least \$37,500 to provide a combination of resident services and security services for the benefit of residents of Bayberry.

#### **B. Resident Services**

The community benefit program will include certain resident services, developed in coordination with residents of Bayberry.

**Service Coordination.** As part of the service program, each resident will be asked to complete a comprehensive needs assessment that will assist in identifying the individual and family needs of the residents in the Bayberry community. The Company will hold an annual meeting with residents of Bayberry to discuss and select those programs and services that will offer the greatest benefit to residents. The Company will provide advance notice of the meeting to the City Council member and County Commission member in whose legislative district Bayberry Apartments is located. The on-site manager of Bayberry will also serve as liaison to these elected officials and will be available to meet upon request to discuss the status of resident services being provided under this program.

The Company anticipates contracting with one or more non-profit or other community support organizations to provide resident services under this program.

**Potential Services – Adult Tenants.** The programs considered for adult tenants of Bayberry will include:

1. Family Support
2. Life Skills
3. Targeted Coaching

**Potential Services – Children of Tenants and Tenants with Children.** The programs considered for tenants of Bayberry with children and for the children of tenants will include:

1. Family Support
2. Life Skills
3. Back to School Fair
4. After School Programs

5. Summer Programs
6. Targeted Coaching

**C. Enhanced Security**

Management of Bayberry Apartments will, from time to time, contract with off-duty police officers and/or private security services to provide on-site security.



This instrument prepared by & return to:  
Robert D. Hyde  
35 Union Avenue, Suite 200  
Memphis, Tennessee 38103

Book/Page: **GI 11313 / 856**

Instrument: 2018040600189

12 Page QUITCLAIM DEED

Recorded by DLS on 4/6/2018 at 4:02 PM

DEED RECORDING FEE 60.00

DATA PROCESSING FEE 2.00

TOTAL FEES \$62.00

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

### QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that **ALCO WOODLAWN PARTNERS, L.P.**, a Tennessee limited partnership (the "Grantor") for and in consideration of the sum of TEN DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby bargain, sell, release, remise, quitclaim and convey unto **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE**, a public nonprofit corporation and an instrumentality of the City of Chattanooga, Tennessee (the "Grantee"), all of its right, title and interest in and to the following described real estate located in Hamilton County, Tennessee to-wit:

See Exhibit A attached hereto and made a part hereof (the "Property").

Being all of the property conveyed to Grantor by Warranty Deeds of record at Instrument Numbers 2016120600273, 2016120600274 and 2016120600275 in the Hamilton County, Tennessee Register's Office.

This Quitclaim Deed is made subject to the following matters as follows:

- 1/2  
23020
- (a) All rights and interests in the Fee Estate (now or later existing) are encumbered by that certain Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (Deed of Trust) made by Grantor for the benefit of Love Funding Corporation (Lender), dated as of December 1, 2016 and recorded on December 6, 2016 at Book 10923, Page 771 (Instrument Number 2016120600282) in the Register's Office of Hamilton County, Tennessee, securing the principal sum of \$7,047,000.00, as affected by that certain Regulatory Agreement for Multi-Family Projects dated as of December 1, 2016, executed by Alco Woodlawn Partners, L.P., a Tennessee limited partnership, and the United States Department of Housing and Urban Development (HUD), acting by and through the Secretary, his or her successors, assigns or designates, referred to in the Deed of Trust of even date and recorded on December 6, 2016, at Book 10923, Page 825 (Instrument Number 2016120600283) in the Register's Office of Hamilton County, Tennessee, as incorporated by reference in the Deed of Trust.
  - (b) Upon the occurrence of an Event of Default, Lender and HUD (if applicable) may take such action, without notice or demand, including foreclosure of the Mortgaged Property, as it deems advisable, to protect and enforce its rights in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of the Deed of Trust.
  - (c) Grantee has no personal liability for the repayment of the Indebtedness or the performance of any of Grantor's obligations under the Deed of Trust.

The words Grantor and Grantee as used herein shall mean "Grantors" and "Grantees," respectively, if more than one person or entity be referred to, and pronouns shall be construed according to their proper gender and number according to the context hereof.

WITNESS the signature of Grantor as of this 15 day of February, 2018.

ALCO WOODLAWN PARTNERS, L.P., a  
Tennessee limited partnership

By: Alco Properties, Inc., a Georgia corporation,  
its general partner

By:   
Robert D. Hyde, President

STATE OF TENNESSEE  
COUNTY OF SHELBY

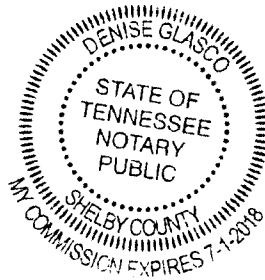
Before me, Denise Glasco, of the state and county aforementioned, personally appeared Robert D. Hyde, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Alco Properties, Inc., the general partner of Alco Woodlawn Partners, L.P., the within named bargainor and that he as such President of the general partner, executed the foregoing instrument for the purpose therein contained, by signing the name of the within named bargainor by himself as President of the general partner.

WITNESS my hand, at office, this 15<sup>th</sup> day of February, 2018.

Denise Glasco  
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES:  
July 1, 2018

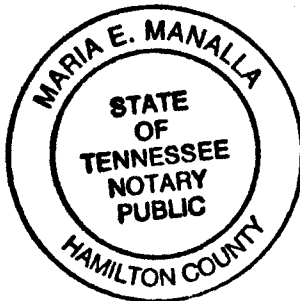


STATE OF TENNESSEE  
COUNTY OF Hamilton

I, or we, hereby swear or affirm that to the best of affiants knowledge, information, and belief, the actual consideration for this transfer is – EXEMPT – pursuant to Tenn. Code Ann. Section 67-4-409(f)(1).

Hicks Amson  
Affiant

Subscribed and sworn to before me this 26<sup>th</sup> day of February, 2018.



Maria Manalla  
Notary Public

My Commission Expires:

5/27/18

Owner Name and Address:

The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee  
c/o Mr. Phillip A. Noblett  
Suite 200  
100 E. 11<sup>th</sup> Street  
Chattanooga, TN 37402

Property Addresses:

1101 Arlington Avenue  
2300 Wilson Street  
2300 Windsor Street  
Chattanooga, TN

Tax Parcel Id Nos.:

146DA001  
146DA009  
146DD003

Mail tax bills to:

Alco Woodlawn Partners, L.P.  
35 Union Avenue, Suite 200  
Memphis, TN 38103



## EXHIBIT A

# Legal Description Bayberry Apartments

DESCRIPTION FOR BAYBERRY APARTMENTS  
(fka WOODLAWN I & II AND WINDSOR TERRACE)

PROPERTY SITUATED AND BEING IN HAMILTON COUNTY, TENNESSEE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

### Tract One

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being described in Deed book 2003, Page 763 Register's Office of Hamilton County (R.O.H.C.) known as Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 13, and Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 16, together with an abandoned alley, City of Chattanooga Ordinance No. 6324 an part of abandoned Taylor Street, City of Chattanooga Ordinance No. 5180 Woodlawn Subdivision Plat Book 2, Page 3, R.O.H.C. To find the point of beginning begin at the Northeast intersection of Arlington Avenue and Windsor Street, a 50 foot dedicated right of way North 66 degrees 12 minutes 14 seconds West 293.16 feet to a rebar corner; thence leaving said right of way and with and along the centerline of Taylor Street abandoned aforementioned also being the East line of Estate of Milton Vincent, Deed Book 8971, Page 694 (R.O.H.C.) North 23 degrees 58 minutes 51 seconds East 398.76 feet to an iron pipe corner; thence leaving said East line and with and along the South line of Marvin and Ronald Berke, Deed Book 5587, Page 395 R.O.H.C. and the South line of Tract No. 2, Woodlawn Apartments South 66 degrees 26 minutes 35 seconds East being the Southeast corner of Marvin and Ronald Berke aforementioned a total of 292.55 feet to an iron pipe corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 399.98 feet to a spike corner and the point of beginning. Said parcel contains 2.68 acres

### Tract Two

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being a part of Deed 1884, page 246 Register's Office of Hamilton County (R.O.H.C.). To find the true point of beginning begin at the remote point of beginning which is the northeast corner intersection of Windsor Street on Arlington Avenue; thence with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way North 23 degrees 53 minutes 33 seconds East 399.98 feet to an iron pipe corner and the true point of beginning; thence with and along the North line of Lot 1, Block 13, Woodlawn Subdivision, Plat book 2, Page 3, R.O.H.C., North 66 degrees 26 minutes 35 seconds West 260.00 feet to a point; thence leaving said North line and with and along the East line of Marvin and Ronald Berke, Deed Book 5587, page 395 R.O.H.C. with a series of calls and distances as follows: North 18 degrees 06 minutes 05 seconds East 95.12 feet to a point; thence North 03 degrees 39 minutes 00 seconds East 111.00 feet to a point; thence North 17 degrees 39 minutes 00 seconds East 90.00 feet to a point; thence North 11 degrees 24 minutes 00 seconds East 66.40 feet to an iron pipe corner and a point of curve; thence with a curve measured to the left an arc distance of 56.8 feet to a point of tangent, said curve has a radius of 42.2 feet a tangent of 33.63 feet and is subtended by a chord North 27 degrees 09

minutes 33 seconds West 52.06 feet; thence North 65 degrees 33 minutes 00 seconds West 57.80 feet to a point; thence North 20 degrees 49 minutes 48 seconds East 359.51 feet to a rebar corner; thence leaving said East and with and along the South line of Wilson Street, a 50 foot public dedicated right of way South 66 degrees 16 minutes 19 seconds East 278.00 feet to a rebar corner; thence leaving said South right of way and with and along the West line of Lot 4, Fred W. Licker, Jr., (not recorded) South 23 degrees 53 minutes 00 seconds West 150.00 feet to a rebar corner; thence leaving said West line and with and along the South line of Lots 1 thru 4, Fred W. Licker, Jr. (not recorded) South 66 degrees 25 minutes 00 seconds East 172.00 feet to a rebar corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 595.90 feet to the true point of beginning. Said Tract 2 contains 5.70 acres.

#### Tract Three

A parcel of land situated in Chattanooga, Hamilton County, Tennessee as described in Deed Book 1899, page 376 Register's Office of Hamilton County (R.O.H.C.). Said parcel is known as Lots 1, 2, 3 and 4, Block 10, and Lots 1, 2, 3 and part of Lot 4, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C., together with abandoned portion of Arlington Avenue and part of abandoned Taylor Street. To find the point of beginning begin at the Northwest corner of an unopened 10 foot alley and the South right of way of Windsor Street; thence with and along the West line of said unopened alley South 23 degrees 51 minutes 37 seconds West 199.30 feet to a rebar corner; thence leaving said West line and with and along the North line of Lot 5, Block 10 and Lot 5, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C. and the right of way of Arlington Avenue North 66 degrees 10 minutes 20 seconds West 276.00 feet to a rebar corner; thence leaving said South line North 23 degrees 24 minutes 21 seconds East 7.97 feet to a rebar corner; thence continuing with and along the North line North 66 degrees 02 minutes 44 seconds West 89.00 feet to a rebar corner of Taylor Street abandoned; thence with and along the center line of Taylor Street abandoned North 23 degrees 52 minutes 23 seconds East 190.98 feet to a rebar corner; thence leaving said line and with and along the South line of Windsor Street, a 50 foot public dedicated right of way South 66 degrees 11 minutes 49 seconds East 365.00 feet to a spike corner and the point of beginning. Said parcel contains 1.65 acres

Being all of the property conveyed to Alco Woodlawn Partners, L.P., a Tennessee limited partnership by Deeds of record at instrument numbers 2016120600273, 2016120600274 and 2016120600275 in the Hamilton County, Tennessee Register's Office.

**WARNING:** Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30; and 2 C.F.R. Parts 180 and 2424.

### **HUD RIDER TO QUITCLAIM DEED**

This Rider ("Rider") is attached to and amends the Quitclaim Deed executed by **ALCO WOODLAWN PARTNERS, L.P.**, a Tennessee limited partnership ("**Grantor**") conveying certain property described therein to **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE**, a public nonprofit corporation and an instrumentality of the City of Chattanooga, Tennessee ("**Grantee**"), dated as of the 15 day of February, 2018.

To the extent any provisions of this Rider conflict with any provisions in the body of the Quitclaim Deed to which this Rider is attached, the provisions of this Rider shall prevail. Any terms in the body of the Quitclaim Deed not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Quitclaim Deed to which this Rider is attached, and for valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge, covenant and agree as follows:

- (a) Grantee acknowledges and agrees that all rights and interests in the Fee Estate (now or later existing) are encumbered by that certain Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (Deed of Trust) made by Grantor for the benefit of Love Funding Corporation (Lender), dated as of December 1, 2016 and recorded on December 6, 2016 at Book 10923, Page 771 (Instrument Number 2016120600282) in the Register's Office of Hamilton County, Tennessee, securing the principal sum of \$7,047,000.00, as affected by that certain Regulatory Agreement for Multi-Family Projects dated as of December 1, 2016, executed by Alco Woodlawn Partners, L.P., a Tennessee limited partnership, and the United States Department of Housing and Urban Development (HUD), acting by and through the Secretary, his or her successors, assigns or designates, referred to in the Deed of Trust of even date and recorded on December 6, 2016, at Book 10923, Page 825 (Book 10923, Page 825) in the Register's Office of Hamilton County, Tennessee, as incorporated by reference in the Deed of Trust.
- (b) Grantor and Grantee acknowledge to HUD that they have the power, authority and right to execute this Rider.
- (c) Grantee acknowledges and agrees that, upon the occurrence of an Event of Default, Lender and HUD (if applicable) may take such action, without notice or demand, including foreclosure of the Mortgaged Property, as it deems advisable,

to protect and enforce its rights in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of the Deed of Trust.

- (d) Grantee has no personal liability for the repayment of the Indebtedness or the performance of any of Grantor's obligations under the Deed of Trust.
- (e) The Grantor acknowledges, covenants and agrees that the execution of this Quitclaim Deed is not intended to and shall not cause or result in a novation with regard to the Note, the Multifamily Mortgage Assignment of Leases and Rents and Security Agreement and/or the other loan documents and that the existing indebtedness of the Borrower to the Lender evidenced by the Note is continuing, without interruption, and has not been discharged by a new agreement.

Each signatory below hereby certifies that each of their statements and representations contained in this Rider and all their supporting documentation thereto are true, accurate, and complete, and that each signatory has read and understands the terms of this Rider. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**IN WITNESS WHEREOF**, Landlord, Grantee, and Grantor have signed and delivered this Rider to the Quitclaim Deed or have caused this Rider to the Quitclaim Deed to be signed and delivered by their duly authorized representatives, as a sealed instrument.

WITNESS the signature of Grantor as of this 15 day of February, 2018.

ALCO WOODLAWN PARTNERS, L.P.,  
a Tennessee limited partnership

By: Alco Properties, Inc.,  
a Georgia corporation, its general partner

By:   
Robert D. Hyde, President

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, Denise Glasco, of the state and county aforementioned, personally appeared Robert D. Hyde, 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 Alco Properties, Inc., the general partner of Alco Woodlawn Partners, L.P., the within named bargainor and that he as such President of the general partner, executed the foregoing instrument for the purpose therein contained, by signing the name of the within named bargainor by himself as President of the general partner.

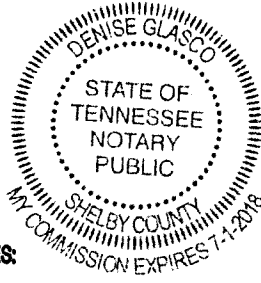
WITNESS my hand, at office, this 15<sup>th</sup> day of February, 2018.

Denise Glasco

Notary Public

My Commission Expires: \_\_\_\_\_

MY COMMISSION EXPIRES:  
July 1, 2018



WITNESS the signature of Grantor as of this 26<sup>th</sup> day of February, 2018

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

By: Hicks Armor  
Chairman

ATTEST:

By: Dan B. Feany  
Secretary

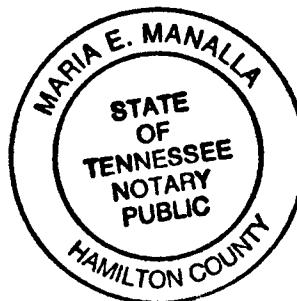
STATE OF TENNESSEE     )  
  )  
COUNTY OF HAMILTON    )

Before me, the undersigned authority, a Notary Public with and for the State and County aforesaid, personally appeared Hicks Armor and Dana Perry, with both of whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon their several oaths acknowledged themselves to be the Chairman and Secretary, respectively, of THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, the within named bargainor, a public not-for-profit corporation, and that they, as such Chairman and Secretary, executed the foregoing instrument for the purpose therein contained by signing the name of said corporation as such officers.

WITNESS my hand and official seal at office in Hamilton County, Tennessee, this 26<sup>th</sup> day of February, 2018

Maria Manalla  
Notary Public

My Commission Expires: 5/27/18



**ACKNOWLEDGEMENT AND APPROVAL BY LENDER AND HUD**

The undersigned hereby acknowledge this transaction by their signatures below.

**LENDER:**

Love Funding Corporation, a Virginia corporation

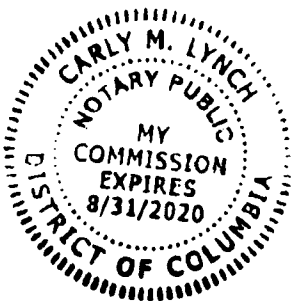
By: Vicki Sammons  
Vicki Sammons, Senior Vice President

)  
DISTRICT OF COLUMBIA )

)  
The foregoing instrument was acknowledged before me on this 12<sup>th</sup> day of  
March, 2018, by Vicki Sammons, in her capacity as Senior Vice President of Love  
Funding Corporation, a Virginia corporation, on behalf of said corporation.

Carly M. Lynch  
NOTARY

My commission expires: 8/31/2020.



US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACTING  
By and through the Secretary of Housing and Urban Development

By:

[Signature]  
Authorized Agent

Branch Chief

STATE OF GEORGIA  
COUNTY OF FULTON

Before me the undersigned authority, a notary public, of the state and county aforesaid, personally appeared Samuel S. Lytle, to me personally known and known to be the duly appointed authorized agent of the Secretary of the United States Department of Housing and Urban Development, who executed the foregoing instrument by virtue of the authority vested in him/her and acknowledged to me that he/she executed it voluntarily for the purposes stated therein on behalf of the Secretary of Housing and Urban Development this the 14<sup>TH</sup> day of March, 2018.

Witness my hand and official seal or stamp.

[Signature]

Notary Public

Print Name:

DEBORAH J JACKSON

My commission expires:

2/2/2020

[Affix Seal]



**Warning**

**Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.**



FILE MILLER & MARTIN



Book/Page: **GI 11313 / 868**

Instrument: 2018040600190

15 Page LEASE

Recorded by DLS on 4/6/2018 at 4:02 PM

MISC RECORDING FEE 75.00

DATA PROCESSING FEE 2.00

TOTAL FEES \$77.00

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

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

### LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered as of this 15<sup>th</sup> day of February, 2018, 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 ALCO WOODLAWN PARTNERS, L.P. (the "Company"), a Tennessee limited partnership.

### 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.

This is a true lease, no security interest.

2/2

4-1

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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 a Tennessee limited partnership duly formed under the laws of the State of Tennessee, 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, 2032.

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 <sup>th</sup> Street Chattanooga, TN 37402
--------	---

Company:	Alco Woodlawn Partners, L.P. c/o Mr. Robert D. Hyde 35 Union Avenue, Suite 200 Memphis, TN 38103
----------	---

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: Dan B. Perry

Secretary

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

By: Hicks Amor

Chairman

ALCO WOODLAWN PARTNERS, L.P.

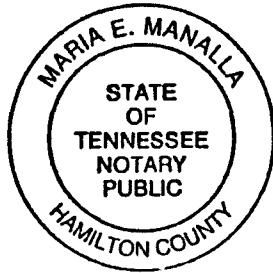
By: [Signature]

Title: President of G.P.

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 5<sup>th</sup> day of January, 2018

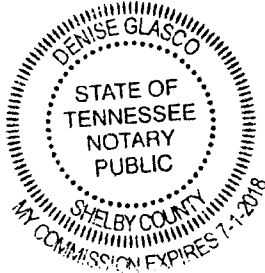


Maria Manalla  
Notary Public  
My Commission Expires: 5/27/18

STATE OF TENNESSEE  
COUNTY OF SHELBY

Personally appeared before me, Denise Glasco, Notary Public, Robert Hyde, 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, ALCO WOODLAWN PARTNERS, L.P., a Tennessee limited partnership, and is authorized by the Maker to execute this instrument on behalf of the Maker.

WITNESS my hand, at office, this 15<sup>th</sup> day of February, 2017.



Denise Glasco  
Notary Public  
My Commission Expires: July 1, 2018

**EXHIBIT "A"**  
**TO LEASE**

**REAL PROPERTY**

**AS-SURVEYD DESCRIPTION**

**Tract One**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being described in Deed book 2003, Page 763 Register's Office of Hamilton County (R.O.H.C.) known as Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 13, and Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 16, together with an abandoned alley, City of Chattanooga Ordinance No. 6324 on part of abandoned Taylor Street, City of Chattanooga Ordinance No. 5180 Woodlawn Subdivision Plat Book 2, Page 3, R.O.H.C. To find the point of beginning begin at the Northeast intersection of Arlington Avenue and Windsor Street, a 50 foot dedicated right of way North 66 degrees 12 minutes 14 seconds West 293.16 feet to a rebar corner; thence leaving said right of way and with and along the centerline of Taylor Street abandoned aforementioned also being the East line of Estate of Milton Vincent, Deed Book 8971, Page 694 (R.O.H.C.) North 23 degrees 58 minutes 51 seconds East 398.76 feet to an iron pipe corner; thence leaving said East line and with and along the South line of Marvin and Ronald Berke, Deed Book 5587, Page 395 R.O.H.C. and the South line of Tract No. 2, Woodlawn Apartments South 66 degrees 26 minutes 35 seconds East being the Southeast corner of Marvin and Ronald Berke aforementioned a total of 292.50 feet to an iron pipe corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 399.98 feet to a spike corner and the point of beginning. Said parcel contains 2.68 acres.

**Tract Two**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being a part of Deed 1884, page 246 Register's Office of Hamilton County (R.O.H.C.). To find the true point of beginning begin at the remote point of beginning which is the northeast corner intersection of Windsor Street on Arlington Avenue; thence with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way North 23 degrees 53 minutes 33 seconds East 399.98 feet to an iron pipe corner and the true point of beginning; thence with and along the North line of Lot 1, Block 13, Woodlawn Subdivision, Plat book 2, Page 3, R.O.H.C., North 66 degrees 26 minutes 35 seconds West 260.00 feet to a point; thence leaving said North line and with and along the East line of Marvin and Ronald Berke, Deed Book 5587, page 395 R.O.H.C. with a series of calls and distances as follows: North 18 degrees 06 minutes 05 seconds East 95.12 feet to a point; thence North 03 degrees 39 minutes 00 seconds East 111.00 feet to a point; thence North 17 degrees 39 minutes 00 seconds East 90.00 feet to a point; thence North 11 degrees 24 minutes 00 seconds East 66.40 feet to an iron pipe corner and a point of curve; thence with a curve measured to the left an arc distance of 56.8 feet to a point of tangent, said curve has a radius of 42.2 feet a tangent of 33.63 feet and is subtended by a chord North 27 degrees 09 minutes 33 seconds West 52.06 feet; thence North 65 degrees 33 minutes 00 seconds 57.80 feet to a point; thence North 20 degrees 49 minutes 48 seconds East 359.51 feet to a rebar corner; thence leaving said East and with and along the South line of Wilson Street, a 50 foot public dedicated right of way South 66 degrees 16 minutes 19 seconds East 278.00 feet to a rebar corner; thence leaving said South right of way and with and along the West line of Lot 4, Fred W. Licker, Jr., (not recorded) South 23 degrees 53 minutes 00 seconds West 150.00 feet to a rebar corner; thence leaving said West line and with and along the South line of Lots 1 thru 4, Fred W. Licker, Jr. (not recorded) South 66 degrees 25 minutes 00 seconds East 172.00 feet to a rebar corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 595.90 feet to the true point of beginning. Said Tract 2 contains 5.70 acres.

AS-SURVEYD DESCRIPTION

Tract Three

A parcel of land situated in Chattanooga, Hamilton County, Tennessee as described in Deed Book 1899, page 376 Register's Office of Hamilton County (R.O.H.C.). Said parcel is known as Lots 1, 2, 3 and 4, Block 10, and Lots 1, 2, 3 and part of Lot 4, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C., together with abandoned portion of Arlington Avenue and part of abandoned Taylor Street. To find the point of beginning begin at the Northwest corner of an unopened 10 foot alley and the South right of way of Windsor Street; thence with and along the West line of said unopened alley South 23 degrees 51 minutes 37 seconds West 199.30 feet to a rebar corner; thence leaving said West line and with and along the North line of Lot 5, Block 10 and Lot 5, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C. and the right of way of Arlington Avenue North 66 degrees 10 minutes 20 seconds West 276.00 feet to a rebar corner; thence leaving said South line North 23 degrees 24 minutes 21 seconds East 7.97 feet to a rebar corner; thence continuing with and along the North line North 66 degrees 02 minutes 44 seconds West 89.00 feet to a rebar corner of Taylor Street abandoned; thence with and along the center line of Taylor Street abandoned North 23 degrees 52 minutes 23 seconds East 190.98 feet to a rebar corner; thence leaving said line and with and along the South line of Windsor Street, a 50 foot public dedicated right of way South 66 degrees 11 minutes 49 seconds East 365.00 feet to a spike corner and the point of beginning. Said parcel contains 1.65 acres.

PERSONAL PROPERTY

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

Book 10923 Page 726  
Book 10923 Page 730  
Book 10923 Page 734

Lease Addendum

U.S. Department of Housing  
and Urban Development  
Office of Housing

OMB Approval No. 2502-0598  
(Exp. 06/30/2017)

### LEASE ADDENDUM

*Feasum 15*  
This Addendum to Lease, dated as of ~~January 4~~, 2018 is attached to and made a part of that certain Ground Lease dated ~~January 4~~, 2018, entered into by Landlord and Tenant (the "Lease"), and amends and/or supplements the Lease for so long as HUD is the holder or insurer of any indebtedness secured by the Project (as defined below), the provisions of this Addendum shall apply to the Lease. In the event of any conflict between the terms of this Addendum and the Lease, the terms of this Addendum shall govern and control.

**Covenants.** Landlord and Tenant covenant and agree as follows:

#### **I. DEFINITIONS.**

**1. DEFINITIONS.** Any capitalized term or word used herein but not defined shall have the meaning given to such term in the Security Instrument. The following terms, when used in this Addendum (including when used in the above recitals), shall have the following meanings, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results:

**"Regulatory Agreement"** means that certain Regulatory Agreement for Multifamily Projects relating to the Project and entered into by Landlord for the benefit of HUD.

**"Security Instrument"** means that certain MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (TENNESSEE) from Tenant in favor of Lender with respect to the Project securing the Loan, and any amendments and supplements thereto.

**"HUD"** means the U.S. Department of Housing and Urban Development.

**"Landlord"** means the THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, a public nonprofit corporation and an instrumentality of the City of Chattanooga, Tennessee, together with any successors, heirs and assigns (jointly and severally).

**"Borrower"** means ALCO WOODLAWN PARTNERS, L.P., a Tennessee limited partnership, together with any successors, heirs and assigns (jointly and severally).

**"Lender"** means LOVE FUNDING CORPORATION, a corporation organized and existing under the laws of Virginia, and any future holder of the Borrower's Security Instrument.



**"Loan"** means the HUD-insured loan in the original principal amount of \$7,047,000.00, made by Lender to Borrower, secured by the Project, as such Loan may be amended, increased or decreased.

**"Loan Documents"** means the Note, the Security Instrument, the Regulatory Agreement, any subordination agreements, and any and all other documents now or in the future required by and/or assigned to HUD and/or Lender in connection with the Loan(s), as the same may be amended from time to time, provided that the Lease, and any amendments thereto, shall not be considered Loan Documents.

Notwithstanding any other provisions of this ground lease, if and so long as this leasehold is subject to a security instrument insured, reinsured, or held by HUD or given to HUD in connection with a resale, or the Property is acquired and held by HUD because of a default under the security instrument, the following provisions of this Lease Addendum shall be in effect:

- a) The tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by a security instrument on this leasehold estate and the Improvements<sup>1</sup>. The tenant is further authorized to execute all documents necessary as determined by HUD and otherwise to comply with Program Obligations for obtaining such an insured loan.
- b) If approved by HUD, the tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property and its interest in the Improvements without the need for approval or consent by any other person or entity.
- c) (i) Insurance policies shall be in an amount, and with such company or companies and in such form, and against such risks and hazards, as shall be approved by lender and HUD.  
  
 (ii) The landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the tenant to lender. The landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the tenant to lender.
- d) (i) If all or any part of the Property or the Improvements or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the tenant's interest in the leasehold estate or damage to the Improvements or the tenant's interest in the leasehold estate shall be paid to lender or otherwise disposed of as may be provided in the security instrument. Any portion of the award attributable solely to the underlying fee estate (exclusive of any

<sup>1</sup> "Improvements" means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the land, including any future replacements and additions.

Improvements) shall be paid to the landlord. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the landlord bears to the total value of the Property as established by the amount HUD is to pay, as set forth in paragraph (b) of this Lease Addendum.

(ii) All awards and/or proceeds from the condemnation, or the negotiated sale in lieu of condemnation, of all or any part of the tenant's and/or landlord's interests in the Property, Improvements or the leasehold estate, shall be paid to lender and applied as provided in the security instrument.

- e) The landlord agrees that within ten (10) days after receipt of written request from the tenant, it will join in any and all applications for permits, licenses or other authorizations required by any Governmental Authority<sup>2</sup> in connection with any work which the tenant may do hereunder and will also join in any grants for easements for electric telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the Property or of any Improvements and if, at the expiration of such ten (10) day period, the landlord shall not have joined in any such application, or grants for easements, the tenant shall have the right to execute such application and grants in the name of the landlord, and for that purpose, the landlord hereby irrevocably appoints the tenant as its attorney-in-fact to execute such papers on behalf of the landlord, only to the extent that a public body as landlord may do so within the exercise of its municipal powers and responsibilities.
- f) Nothing in this ground lease shall require the tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the landlord or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the tenant under this ground lease.
- g) All notices, demands and requests which are required to be given by the landlord, the tenant, lender or HUD in connection with this Ground Lease shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

All notices to lender or HUD shall be addressed as follows:

If to Lender:	Love Funding Corporation Attn: General Counsel 1250 Connecticut Avenue, N.W., Ste 350 Washington, DC 20036
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<sup>2</sup> "Governmental Authority" means any board, commission, department or body of any municipal, county, state, tribal or federal governmental unit, including any U.S. territorial government, and any public or quasi-public authority, or any subdivision of any of them, that has or acquires jurisdiction over the mortgaged property, including the use, operation or improvement of the mortgaged property.

If to HUD: U.S. Department of Housing and Urban Development  
Attn: Asset Management  
710 Locust Street, SW  
Knoxville, TN 37902

If to Tenant/Borrower: Alco Woodlawn partners, L.P.  
35 Union Ave., Ste 200  
Memphis, TN 38103-2417  
Attn: Robert Hyde

If to Landlord: The Health, Educational and Housing Facility Board  
of the City of Chattanooga, Tennessee  
c/o Mr. Phillip A. Noble  
Suite 200, 100 E. 11<sup>th</sup> Street  
Chattanooga, TN 37402

- h) This ground lease shall not be modified without the written consent of HUD and lender.
- i) The provisions of this Lease Addendum benefit lender and HUD and are specifically declared to be enforceable against the parties to this lease and all other persons by lender and HUD. In the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum and the provisions of any other part of this ground lease, the provisions of this Lease Addendum shall prevail and control.


**[signatures appear on subsequent pages]**

IN WITNESS WHEREOF, this Lease Addendum has been duly executed by HUD Lender, Landlord, and Tenant as of this 15th day of February, 2018.

**TENANT / BORROWER**

ALCO WOODLAWN PARTNERS, L.P.,  
a Tennessee limited partnership

By: Alco Properties, Inc., a Georgia  
corporation, its general partner

By:   
Robert D. Hyde, President

LANDLORD


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

By: Hicks Amma  
Chairman

This Ground Lease Addendum is acknowledged by HUD LENDER as of this 12<sup>th</sup> day of March, 2018.

**HUD Lender:**

Love Funding Corporation,  
a Virginia corporation



\_\_\_\_\_  
Vicki Sammons, Vice President

ACKNOWLEDGED:

US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACTING  
By and through the Secretary of Housing and Urban Development

By: 

Authorized Agent

*Branch Chief*

**Warning**

**Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions.**

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

**THIS AGREEMENT** is made and entered into as of the 15<sup>th</sup> day of February, 2018, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the "Board"); Alco Woodlawn Partners, L.P., 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").

**W I T N E S S E T H:**

**WHEREAS**, the Company is contemplating the improvement of the properites located at 2300 Wilson Street, 1101 Arlington Ave., and 2300 Windsor Street in Chattanooga, Hamilton County, Tennessee, including the renovation, equipping and furnishing of a multifamily, low income housing tax credit apartment project with approximately 163 one, two and three 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 a resolution adopted by the City, acting through its duly elected Council, which resolution delegates to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions; 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 and the City Treasurer, 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 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. According to Chapter 0600-10 of the Rules of the Tennessee State Board of Equalization, following renovation of the Property, such appraisal shall consist of two components: (i) the restricted use component ( the "Restricted Income Value") which will be based on the Assessor's valuation of the Project's operating income, and (ii) the LIHTC subsidy component (the "LIHTC Subsidy Value") which will be based on the Assessor's valuation of the LIHTC subsidy provided to the Project by the Tennessee Housing Development Agency (collectively the Restricted Income Value and the LIHTC Subsidy Value are hereinafter referred to as the "Renovated Project Value"). 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. 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 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.

(a) Payments for Unrenovated Project (not applicable to County – see Section 4(b)(i)). For each of the years 2018 through 2032 (the "Real Property Tax Abatement Period"), the Company shall make In Lieu 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 2016 (the "Base Year") on the value of the Project, which value is \$3,667,200 (the "Unrenovated Project Value"). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the Unrenovated Project Value exclusive of the improvements made in connection with the renovation of the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Payments for Renovated Project.

(i) Applicability to the County; 100% In Lieu of Tax Payment to County. Notwithstanding any provisions in this Agreement to the contrary, the Company shall make In Lieu Payments to the County equal to the County property taxes that would be due on the Property if it were subject to taxation. The parties acknowledge that the provisions set forth in subsection (a), immediately above, and the provisions of paragraphs (ii) – (iv), immediately below,

were developed and presented to the City and the Board in contemplation of a request for reduced in Lieu Payments from the County. Due to timing considerations for the Project, the Company has elected to proceed without making a request for reduced In Lieu Payments to the County. The Company shall make In Lieu Payments to the County in an amount equal to the County property taxes that would be due on the Property if it were subject to taxation.

(ii) School Tax on Renovations (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated 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”) based upon the increase in the Renovated Project Value over the Unrenovated Project Value (the “Renovation Value”). The parties acknowledge and agree that the School Portion currently equates to 27.05% 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. The parties further acknowledge that the percentage of the School's Portion will vary as City and County tax rates change.

(iii) County General Fund Tax on Renovations (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, the Company shall also make In Lieu Payments in the amount equal to the Hamilton County general fund portion of the property taxes that would be due on the improvements to the Property if it were subject to taxation (the “County General Fund Portion”) based upon the increase in the Restricted Income Value over the Unrenovated Project Value. It being the intent that In Lieu

Payments shall not be made for the Hamilton County general fund portion of the property taxes that would be due on the LIHTC Subsidy Value of the Project.

(iv) Phase In Period (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, additional In Lieu Payments on the improvements will be as follows:

Year	City General Fund <sup>(1)</sup>	County General Fund <sup>(1) (2)</sup>
	Renovation Value	LIHTC Subsidy Value
2018 – 2027	0%	0%
2028	20%	20%
2029	40%	40%
2030	60%	60%
2031	80%	80%
2032	100%	100%

<sup>(1)</sup> – The above percentages refer to the percent of the amount of taxes that would have been payable on the value if it were subject to property taxes.

<sup>(2)</sup> – These percentages will only apply if and to the extent approved by the County Commission of Hamilton County, Tennessee. In the event that no such resolution is adopted, the applicable percentage shall be 100%.

As noted above, during such years 2018 to 2032 (the "Improvements Tax Abatement Period"; the Improvements Tax Abatement and the Real Property Tax Abatement Period collectively called the "Tax Abatement Period"), the Company shall continue to pay the School Portion attributable to the Hamilton County Schools and the General Fund Portion attributable to the County general fund. For any periods before or after the Tax Abatement 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.

5. Penalties and Late Charges; Affordability Requirement. 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 and 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) The Company covenants as follows:

(i) The Project will be completed within twenty-four (24) months following the date of this Agreement.

(ii) After completion of the Project and during the Tax Abatement Period, 100% of the dwelling units in the Project will be set aside for occupancy by households 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 (the "Affordability Requirement").

(iii) After completion of the Project and during the Tax Abatement Period, the Project shall be maintained in habitable condition and in compliance with all applicable City and County ordinances and codes.

(iv) Beginning January 1, 2018, the Company shall provide services to tenants residing on the Property in accordance with the Community Benefit Plan set forth in Exhibit "C" (the "Community Benefit Plan")

(d)

(i) If the Company should fail to meet the Affordability Requirement under Section 5(c)(ii) above with respect to the Project and 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 (an "Affordability Event of Default"), the City and the County may then require the Company to pay an additional In Lieu Payment based upon the difference

between (i) the In Lieu Payments on the Property owed pursuant to Section 4 during the period of the continuance of such Affordability Event of Default and (ii) the full taxes that would have been payable on the Property if it were subject to property taxes multiplied by a fraction (expressed as a percentage), the denominator of which is the number of dwelling units at the Project subject to the Affordability Requirement and the numerator of which is the number of dwelling units that are not occupied by or available for occupancy by households 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. The County and the City shall look solely to the Company for any repayment obligations.

(ii) If the Company should fail to spend the annual budget for services under the Community Benefit Plan, the City and the County (if applicable) may then require the Company to pay an additional In Lieu Payment based upon the difference between (i) the Company's actual expenditures on services set forth in the Community Benefit Plan; and (ii) the annual budget for the Company's expenditures set forth in the Community Benefit Plan.

(iii) In no event shall the Company be required to pay more in In Lieu Payments than the Company would have paid in property taxes, if the Property were subject to property taxes.

6. Disbursements by the Treasurer and Trustee. 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. 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. 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 §48-101-302.

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 the City, the County and the Board, 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(c). Beginning on February 15, 2019 and on or before February 15 of each calendar year thereafter during this Agreement, the Company will also provide the City, the County and the Board with evidence of the Company's expenditures under the Community Benefit Plan. An independent audit of these certifications 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. 11<sup>th</sup> 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. Robert D. Hyde, Alco Woodlawn Partners, L.P., 35 Union Ave., Suite 200, Memphis, TN 38103; 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, 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.

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.

(a) 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 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.

(b) Notwithstanding the provisions of subsection (a), above, and notwithstanding any other provision in this Agreement or the Lease to the contrary, the Company may make a collateral assignment of all or any portion of its interests in this Agreement, the Lease and the Project for the benefit of one or more banks or other lenders that, from time to time, provide financing to the Company. Nothing in this Agreement or the Lease shall in any way restrict any sale or transfer of the leasehold interest and other interests of the Company in the Project pursuant to a judicial or non-judicial foreclosure sale as a result of the exercise of any one or more lender's rights under the applicable loan documents. The City, the County and the Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the City, County or Board, in consummating any financing for the Company that involves a pledge or assignment of the Company's interests in this Agreement, the Lease or the Project. Without limitation of the foregoing, the Mayor of the City, the Mayor of the County, and the Chairman of the Board, or any of their respective designees, are authorized, upon the Company's request, enter into or consent to such documents as are necessary to consummate such financing including,

without limitation, the "HUD Rider to Security Instrument" attached hereto as Exhibit "B" as well as additional consents to assignment, deeds of trust, estoppel certificates, subordination and non-disturbance agreements, affidavits and certificates, provided that any such documents are expressly non-recourse to the City, County and Board beyond the Board's interest in the Project.

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

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole general partner

By: 

Title: Representative of A.P.

CITY OF CHATTANOOGA, TENNESSEE

By: 

Mayor Council Chair

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**

**AS-SURVEYD DESCRIPTION**

**Tract One**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being described in Deed book 2003, Page 763 Register's Office of Hamilton County (R.O.H.C.) known as Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 13, and Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 16, together with an abandoned alley, City of Chattanooga Ordinance No. 6324 on part of abandoned Taylor Street, City of Chattanooga Ordinance No. 5180 Woodlawn Subdivision Plat Book 2, Page 3, R.O.H.C. To find the point of beginning begin at the Northeast intersection of Arlington Avenue and Windsor Street, a 50 foot dedicated right of way North 66 degrees 12 minutes 14 seconds West 293.16 feet to a rebar corner; thence leaving said right of way and with and along the centerline of Taylor Street abandoned aforementioned also being the East line of Estate of Milton Vincent, Deed Book 8971, Page 694 (R.O.H.C.) North 23 degrees 58 minutes 51 seconds East 398.76 feet to an iron pipe corner; thence leaving said East line and with and along the South line of Marvin and Ronald Berke, Deed Book 5587, Page 395 R.O.H.C. and the South line of Tract No. 2, Woodlawn Apartments South 66 degrees 26 minutes 35 seconds East being the Southeast corner of Marvin and Ronald Berke aforementioned a total of 292.50 feet to an iron pipe corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 399.98 feet to a spike corner and the point of beginning. Said parcel contains 2.68 acres.

**Tract Two**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being a part of Deed 1884, page 246 Register's Office of Hamilton County (R.O.H.C.). To find the true point of beginning begin at the remote point of beginning which is the northeast corner intersection of Windsor Street on Arlington Avenue; thence with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way North 23 degrees 53 minutes 33 seconds East 399.98 feet to an iron pipe corner and the true point of beginning; thence with and along the North line of Lot 1, Block 13, Woodlawn Subdivision, Plat book 2, Page 3, R.O.H.C., North 66 degrees 26 minutes 35 seconds West 260.00 feet to a point; thence leaving said North line and with and along the East line of Marvin and Ronald Berke, Deed Book 5587, page 395 R.O.H.C. with a series of calls and distances as follows: North 18 degrees 06 minutes 05 seconds East 95.12 feet to a point; thence North 03 degrees 39 minutes 00 seconds East 111.00 feet to a point; thence North 17 degrees 39 minutes 00 seconds East 90.00 feet to a point; thence North 11 degrees 24 minutes 00 seconds East 66.40 feet to an iron pipe corner and a point of curve; thence with a curve measured to the left an arc distance of 56.8 feet to a point of tangent, said curve has a radius of 42.2 feet a tangent of 33.63 feet and is subtended by a chord North 27 degrees 09 minutes 33 seconds West 52.06 feet; thence North 65 degrees 33 minutes 00 seconds 57.80 feet to a point; thence North 20 degrees 49 minutes 48 seconds East 359.51 feet to a rebar corner; thence leaving said East and with and along the South line of Wilson Street, a 50 foot public dedicated right of way South 66 degrees 16 minutes 19 seconds East 278.00 feet to a rebar corner; thence leaving said South right of way and with and along the West line of Lot 4, Fred W. Licker, Jr., (not recorded) South 23 degrees 53 minutes 00 seconds West 150.00 feet to a rebar corner; thence leaving said West line and with and along the South line of Lots 1 thru 4, Fred W. Licker, Jr. (not recorded) South 66 degrees 25 minutes 00 seconds East 172.00 feet to a rebar corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 595.90 feet to the true point of beginning. Said Tract 2 contains 5.70 acres.



#### AS-SURVEYD DESCRIPTION

##### Tract Three

A parcel of land situated in Chattanooga, Hamilton County, Tennessee as described in Deed Book 1899, page 376 Register's Office of Hamilton County (R.O.H.C.). Said parcel is known as Lots 1, 2, 3 and 4, Block 10, and Lots 1, 2, 3 and part of Lot 4, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C., together with abandoned portion of Arlington Avenue and part of abandoned Taylor Street. To find the point of beginning begin at the Northwest corner of an unopened 10 foot alley and the South right of way of Windsor Street; thence with and along the West line of said unopened alley South 23 degrees 51 minutes 37 seconds West 199.30 feet to a rebar corner; thence leaving said West line and with and along the North line of Lot 5, Block 10 and Lot 5, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C. and the right of way of Arlington Avenue North 66 degrees 10 minutes 20 seconds West 276.00 feet to a rebar corner; thence leaving said South line North 23 degrees 24 minutes 21 seconds East 7.97 feet to a rebar corner; thence continuing with and along the North line North 66 degrees 02 minutes 44 seconds West 89.00 feet to a rebar corner of Taylor Street abandoned; thence with and along the center line of Taylor Street abandoned North 23 degrees 52 minutes 23 seconds East 190.98 feet to a rebar corner; thence leaving said line and with and along the South line of Windsor Street, a 50 foot public dedicated right of way South 66 degrees 11 minutes 49 seconds East 365.00 feet to a spike corner and the point of beginning. Said parcel contains 1.65 acres.

#### PERSONAL PROPERTY

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

**EXHIBIT "B"**

**RIDER TO SECURITY INSTRUMENT  
FEE JOINDER**

**WARNING:** Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30; and 2 C.F.R. Parts 180 and 2424.

## **RIDER TO SECURITY INSTRUMENT FEE JOINDER**

*[Instructions: When using this form, amend the first paragraph of the Security Instrument to include the Ground Lessor as an accommodating "Joinder Party" to ensure proper indexing against the Ground Lessor among the land records.]*

This Rider ("Rider") is attached to and amends the Security Instrument entered into between \_\_\_\_\_ ("Borrower") and \_\_\_\_\_ ("Lender"), dated as of \_\_\_\_\_.

*[For a Mortgage OR Deed to Secure Debt, insert the following:]*

[This Rider is provided to secure to Lender the repayment of the Indebtedness, and the performance of the covenants and agreements of Borrower and Ground Lessor contained in the Loan Documents, Borrower and Ground Lessor mortgage, warrant, grant, convey and assign to Lender the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

**OR**

*[For a Deed of Trust, insert the following:]*

[Borrower and Ground Lessor, in consideration of the Indebtedness and the trust created by this Security Instrument, irrevocably grant, convey and assign to Trustee, in trust, with power of sale, the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

To the extent any provisions of this Rider conflict with any provisions in the body of the Security Instrument to which this Rider is attached, the provisions of this Rider shall prevail. Any terms in the body of the Security Instrument not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Security Instrument to which this Rider is attached, and for valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge and agree, and to induce the Lender to make the Loan to Borrower described in the Security Instrument, Borrower and Ground Lessor covenant and agree as follows:

1. Definitions

The following terms shall be added to Section 1 (Definitions) of the Security Instrument:

- (a) **"Fee Estate"** means that fee simple interest in the Land, presently held by Ground Lessor.
- (b) **"Ground Lease"** means that lease attached as Exhibit [ ], pursuant to which Borrower leases the Land from Ground Lessor, as such lease may be amended, modified, supplemented, renewed, and extended, but only with prior written approval of Lender and HUD.
- (c) **"Ground Lessor"** means that landlord, leasing the Land to Borrower pursuant to the Ground Lease.
- (d) **"Leasehold Estate"** means Borrower's interest in the Land and all other real property, existing pursuant to the Ground Lease, including the following:
  - (i) All rights of Borrower to renew or extend the term of the Ground Lease.
  - (ii) All amounts deposited by Borrower with Ground Lessor under the Ground Lease.
  - (iii) Borrower's right or privilege to terminate, cancel, surrender, modify, or amend the Ground Lease.
  - (iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances and improvements with respect to the Ground Lease.

The following term will be modified in Section 1 (Definitions) of the Security Instrument:

- (e) **"Mortgaged Property"** retains that same definition as provided in the Security Instrument, excepting that it is extended to also include Ground Lessor's present and future right, title and interest in and to those respective items (1-17), identified in the Security Instrument's definition of "Mortgaged Property."

2. Ground Lessor Joinder

- (a) Ground Lessor acknowledges and agrees that all rights and interests in the Fee Estate and Leasehold Estate and any indebtedness owed by Borrower (now or later existing) are encumbered by the Security Instrument.
- (b) By its execution and delivery of this Rider, Ground Lessor joins in the Security Instrument with the same intent and consequence as if Ground Lessor were originally a party to the Security Instrument, for the purpose of encumbering the Fee Estate with the lien of the Security Instrument, granting Lender a first priority

lien on the Fee Estate, and acknowledging the agreements, covenants and obligations set forth in this Rider are applicable to Ground Lessor.

- (c) Ground Lessor represents that Ground Lessor possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land and, to the extent not owned in fee by Borrower, the Improvements, free and clear of all Liens, encumbrances and charges except for those otherwise approved by Lender and HUD.
- (d) Ground Lessor represents to Lender and HUD that it has the power, authority and right to execute this Rider and to deed, grant, convey and assign a security interest in Ground Lessor's right, title and interest in the Mortgaged Property pursuant to the terms of this Rider and to keep and observe all of the terms of this Rider to be performed by Ground Lessor under this Rider.
- (e) Ground Lessor agrees that it shall not without the prior written approval of Lender and HUD:
  - (i) Convey, assign, transfer, pledge, or encumber any part of the Mortgaged Property or any interest in the Mortgaged Property, except as provided for under the Ground Lease.
- (f) Ground Lessor acknowledges all of the following:
  - (i) Lender has not made any representations or warranties to Ground Lessor with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
  - (ii) Ground Lessor assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Ground Lessor wishes to do so.
  - (iii) Lender will have no duty to disclose or report to Ground Lessor any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (g) At any time, after Ground Lessor receives from Lender or HUD a notice of an Event of Default under any of the Loan Documents, Ground Lessor has the right (but will not be obligated) to make any payment, perform any obligation and take any other action that Borrower would have the right to pay, perform or take under the applicable Loan Document which Ground Lessor deems necessary or desirable to cure the Event of Default.
- (h) Ground Lessor acknowledges and agrees that, upon the occurrence of an Event of Default, Lender or Trustee (if applicable) may take such action, without notice or demand, including foreclosure of the Mortgaged Property, as it deems advisable, to

protect and enforce its rights against Borrower, Ground Lessor, and in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of this Rider, the Security Instrument, and the other Loan Documents.

- (i) Ground Lessor has no personal liability for the repayment of the Indebtedness or the performance of any of Borrower's obligations under the Loan Documents. Ground Lessor's liability is expressly limited to the Mortgaged Property. However, nothing in this Rider limits the liability or obligations of Ground Lessor, in its capacity as landlord, under the Ground Lease.

3. Borrower's Acquisition of Fee Estate

- (a) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all parties, including Lender, having an interest in the Ground Lease consent in writing to the merger of estates.
- (b) If Borrower acquires the Fee Estate during any period in which HUD insures or holds the Security Instrument and Note, Borrower must promptly notify HUD and Lender (if applicable) of such acquisition.
- (c) Simultaneously with Borrower's acquisition of the Fee Estate, the lien of this Security Instrument automatically, without the necessity of any further conveyance or recording, continues to cover the Fee Estate and remains prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of this Security Instrument. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's attorneys' fees and costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject or further subject the Fee Estate to the first lien of this Security Instrument or to confirm and ratify such first lien, and must provide to Lender a title insurance policy insuring the lien of this Security Instrument as a first lien on the Fee Estate and the Leasehold Estate, as applicable.

Each signatory below hereby certifies that each of their statements and representations contained in this Rider and all their supporting documentation thereto are true, accurate, and complete, and that each signatory has read and understands the terms of this Rider. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**IN WITNESS WHEREOF**, Borrower and Ground Lessor have signed and delivered this Rider to the Security Instrument or have caused this Rider to the Security Instrument to be signed and delivered by their duly authorized representatives, as a sealed instrument.

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

By: \_\_\_\_\_  
Chairman \_\_\_\_\_

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole general partner

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT "C"**

### **COMMUNITY BENEFIT PROGRAM – BAYBERRY APARTMENTS**

#### **A. Community Benefit Program**

During the term of the Agreement, the Company will provide certain community benefits to residents of Bayberry Apartments, selected from the categories identified below. Each year, the Company will establish an annual budget of at least \$37,500 to provide a combination of resident services and security services for the benefit of residents of Bayberry.

#### **B. Resident Services**

The community benefit program will include certain resident services, developed in coordination with residents of Bayberry.

**Service Coordination.** As part of the service program, each resident will be asked to complete a comprehensive needs assessment that will assist in identifying the individual and family needs of the residents in the Bayberry community. The Company will hold an annual meeting with residents of Bayberry to discuss and select those programs and services that will offer the greatest benefit to residents. The Company will provide advance notice of the meeting to the City Council member and County Commission member in whose legislative district Bayberry Apartments is located. The on-site manager of Bayberry will also serve as liaison to these elected officials and will be available to meet upon request to discuss the status of resident services being provided under this program.

The Company anticipates contracting with one or more non-profit or other community support organizations to provide resident services under this program.

**Potential Services – Adult Tenants.** The programs considered for adult tenants of Bayberry will include:

1. Family Support
2. Life Skills
3. Targeted Coaching



**Potential Services – Children of Tenants and Tenants with Children.** The programs considered for tenants of Bayberry with children and for the children of tenants will include:

1. Family Support
2. Life Skills
3. Back to School Fair
4. After School Programs
5. Summer Programs
6. Targeted Coaching

**C. Enhanced Security**

Management of Bayberry Apartments will, from time to time, contract with off-duty police officers and/or private security services to provide on-site security.



MARK W. SMITH

Direct Dial 423-785-8357

Direct Fax 423-321-1527

Mark.Smith@millermartin.com

April 13, 2018

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 – Alco Woodlawn Partners, L.P. –  
The Health, Educational 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 the above-referenced project. Although the document is dated as of February 15, 2018, we only recently received all of the transaction documents.

If you have any questions or need anything further, please do not hesitate to call.

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 15<sup>th</sup> day of February, 2018, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the "Board"); Alco Woodlawn Partners, L.P., 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").

**W I T N E S S E T H:**

**WHEREAS**, the Company is contemplating the improvement of the properities located at 2300 Wilson Street, 1101 Arlington Ave., and 2300 Windsor Street in Chattanooga, Hamilton County, Tennessee, including the renovation, equipping and furnishing of a multifamily, low income housing tax credit apartment project with approximately 163 one, two and three 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 a resolution adopted by the City, acting through its duly elected Council, which resolution delegates to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions; 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 and the City Treasurer, 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 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. According to Chapter 0600-10 of the Rules of the Tennessee State Board of Equalization, following renovation of the Property, such appraisal shall consist of two components: (i) the restricted use component (the "Restricted Income Value") which will be based on the Assessor's valuation of the Project's operating income, and (ii) the LIHTC subsidy component (the "LIHTC Subsidy Value") which will be based on the Assessor's valuation of the LIHTC subsidy provided to the Project by the Tennessee Housing Development Agency (collectively the Restricted Income Value and the LIHTC Subsidy Value are hereinafter referred to as the "Renovated Project Value"). 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. 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 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.

(a) Payments for Unrenovated Project (not applicable to County – see Section 4(b)(i)). For each of the years 2018 through 2032 (the "Real Property Tax Abatement Period"), the Company shall make In Lieu 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 2016 (the "Base Year") on the value of the Project, which value is \$3,667,200 (the "Unrenovated Project Value"). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the Unrenovated Project Value exclusive of the improvements made in connection with the renovation of the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Payments for Renovated Project.

(i) Applicability to the County; 100% In Lieu of Tax Payment to County. Notwithstanding any provisions in this Agreement to the contrary, the Company shall make In Lieu Payments to the County equal to the County property taxes that would be due on the Property if it were subject to taxation. The parties acknowledge that the provisions set forth in subsection (a), immediately above, and the provisions of paragraphs (ii) – (iv), immediately below,

were developed and presented to the City and the Board in contemplation of a request for reduced In Lieu Payments from the County. Due to timing considerations for the Project, the Company has elected to proceed without making a request for reduced In Lieu Payments to the County. The Company shall make In Lieu Payments to the County in an amount equal to the County property taxes that would be due on the Property if it were subject to taxation.

(ii) School Tax on Renovations (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated 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”) based upon the increase in the Renovated Project Value over the Unrenovated Project Value (the “Renovation Value”). The parties acknowledge and agree that the School Portion currently equates to 27.05% 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. The parties further acknowledge that the percentage of the School's Portion will vary as City and County tax rates change.

(iii) County General Fund Tax on Renovations (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, the Company shall also make In Lieu Payments in the amount equal to the Hamilton County general fund portion of the property taxes that would be due on the improvements to the Property if it were subject to taxation (the “County General Fund Portion”) based upon the increase in the Restricted Income Value over the Unrenovated Project Value. It being the intent that In Lieu

Payments shall not be made for the Hamilton County general fund portion of the property taxes that would be due on the LIHTC Subsidy Value of the Project.

(iv) Phase In Period (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, additional In Lieu Payments on the improvements will be as follows:

Year	City General Fund <sup>(1)</sup>	County General Fund <sup>(1) (2)</sup>
	Renovation Value	LIHTC Subsidy Value
2018 – 2027	0%	0%
2028	20%	20%
2029	40%	40%
2030	60%	60%
2031	80%	80%
2032	100%	100%

<sup>(1)</sup> – *The above percentages refer to the percent of the amount of taxes that would have been payable on the value if it were subject to property taxes.*

<sup>(2)</sup> – *These percentages will only apply if and to the extent approved by the County Commission of Hamilton County, Tennessee. In the event that no such resolution is adopted, the applicable percentage shall be 100%.*

As noted above, during such years 2018 to 2032 (the "Improvements Tax Abatement Period"; the Improvements Tax Abatement and the Real Property Tax Abatement Period collectively called the "Tax Abatement Period"), the Company shall continue to pay the School Portion attributable to the Hamilton County Schools and the General Fund Portion attributable to the County general fund. For any periods before or after the Tax Abatement 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.



5. Penalties and Late Charges; Affordability Requirement. 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 and 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) The Company covenants as follows:

(i) The Project will be completed within twenty-four (24) months following the date of this Agreement.

(ii) After completion of the Project and during the Tax Abatement Period, 100% of the dwelling units in the Project will be set aside for occupancy by households 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 (the "Affordability Requirement").

(iii) After completion of the Project and during the Tax Abatement Period, the Project shall be maintained in habitable condition and in compliance with all applicable City and County ordinances and codes.

(iv) Beginning January 1, 2018, the Company shall provide services to tenants residing on the Property in accordance with the Community Benefit Plan set forth in Exhibit "C" (the "Community Benefit Plan")

(d)

(i) If the Company should fail to meet the Affordability Requirement under Section 5(c)(ii) above with respect to the Project and 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 (an "Affordability Event of Default"), the City and the County may then require the Company to pay an additional In Lieu Payment based upon the difference

between (i) the In Lieu Payments on the Property owed pursuant to Section 4 during the period of the continuance of such Affordability Event of Default and (ii) the full taxes that would have been payable on the Property if it were subject to property taxes multiplied by a fraction (expressed as a percentage), the denominator of which is the number of dwelling units at the Project subject to the Affordability Requirement and the numerator of which is the number of dwelling units that are not occupied by or available for occupancy by households 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. The County and the City shall look solely to the Company for any repayment obligations.

(ii) If the Company should fail to spend the annual budget for services under the Community Benefit Plan, the City and the County (if applicable) may then require the Company to pay an additional In Lieu Payment based upon the difference between (i) the Company's actual expenditures on services set forth in the Community Benefit Plan; and (ii) the annual budget for the Company's expenditures set forth in the Community Benefit Plan.

(iii) In no event shall the Company be required to pay more in In Lieu Payments than the Company would have paid in property taxes, if the Property were subject to property taxes.

6. Disbursements by the Treasurer and Trustee. 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. 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. 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 §48-101-302.

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 the City, the County and the Board, 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(c). Beginning on February 15, 2019 and on or before February 15 of each calendar year thereafter during this Agreement, the Company will also provide the City, the County and the Board with evidence of the Company's expenditures under the Community Benefit Plan. An independent audit of these certifications 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. 11<sup>th</sup> 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. Robert D. Hyde, Alco Woodlawn Partners, L.P., 35 Union Ave., Suite 200, Memphis, TN 38103; 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, 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.

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.

(a) 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 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.

(b) Notwithstanding the provisions of subsection (a), above, and notwithstanding any other provision in this Agreement or the Lease to the contrary, the Company may make a collateral assignment of all or any portion of its interests in this Agreement, the Lease and the Project for the benefit of one or more banks or other lenders that, from time to time, provide financing to the Company. Nothing in this Agreement or the Lease shall in any way restrict any sale or transfer of the leasehold interest and other interests of the Company in the Project pursuant to a judicial or non-judicial foreclosure sale as a result of the exercise of any one or more lender's rights under the applicable loan documents. The City, the County and the Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the City, County or Board, in consummating any financing for the Company that involves a pledge or assignment of the Company's interests in this Agreement, the Lease or the Project. Without limitation of the foregoing, the Mayor of the City, the Mayor of the County, and the Chairman of the Board, or any of their respective designees, are authorized, upon the Company's request, enter into or consent to such documents as are necessary to consummate such financing including,



without limitation, the "HUD Rider to Security Instrument" attached hereto as Exhibit "B" as well as additional consents to assignment, deeds of trust, estoppel certificates, subordination and non-disturbance agreements, affidavits and certificates, provided that any such documents are expressly non-recourse to the City, County and Board beyond the Board's interest in the Project.

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

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole general partner

By: 

Title: President of A.P.

CITY OF CHATTANOOGA, TENNESSEE

By: 

Mayor

Council Chair

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

**AS--SURVEYD DESCRIPTION**

**Tract One**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being described in Deed book 2003, Page 763 Register's Office of Hamilton County (R.O.H.C.) known as Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 13, and Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 16, together with an abandoned alley, City of Chattanooga Ordinance No. 6324 on part of abandoned Taylor Street, City of Chattanooga Ordinance No. 5180 Woodlawn Subdivision Plat Book 2, Page 3, R.O.H.C. To find the point of beginning begin at the Northeast intersection of Arlington Avenue and Windsor Street, a 50 foot dedicated right of way North 66 degrees 12 minutes 14 seconds West 293.16 feet to a rebar corner; thence leaving said right of way and with and along the centerline of Taylor Street abandoned aforementioned also being the East line of Estate of Milton Vincent, Deed Book 8971, Page 694 (R.O.H.C.) North 23 degrees 58 minutes 51 seconds East 398.76 feet to an iron pipe corner; thence leaving said East line and with and along the South line of Marvin and Ronald Berke, Deed Book 5587, Page 395 R.O.H.C. and the South line of Tract No. 2, Woodlawn Apartments South 66 degrees 26 minutes 35 seconds East being the Southeast corner of Marvin and Ronald Berke aforementioned a total of 292.50 feet to an iron pipe corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 399.98 feet to a spike corner and the point of beginning. Said parcel contains 2.68 acres.

**Tract Two**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being a part of Deed 1884, page 246 Register's Office of Hamilton County (R.O.H.C.). To find the true point of beginning begin at the remote point of beginning which is the northeast corner intersection of Windsor Street on Arlington Avenue; thence with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way North 23 degrees 53 minutes 33 seconds East 399.98 feet to an iron pipe corner and the true point of beginning; thence with and along the North line of Lot 1, Block 13, Woodlawn Subdivision, Plat book 2, Page 3, R.O.H.C., North 66 degrees 26 minutes 35 seconds West 260.00 feet to a point; thence leaving said North line and with and along the East line of Marvin and Ronald Berke, Deed Book 5587, page 395 R.O.H.C. with a series of calls and distances as follows: North 18 degrees 06 minutes 05 seconds East 95.12 feet to a point; thence North 03 degrees 39 minutes 00 seconds East 111.00 feet to a point; thence North 17 degrees 39 minutes 00 seconds East 90.00 feet to a point; thence North 11 degrees 24 minutes 00 seconds East 66.40 feet to an iron pipe corner and a point of curve; thence with a curve measured to the left an arc distance of 56.8 feet to a point of tangent, said curve has a radius of 42.2 feet a tangent of 33.63 feet and is subtended by a chord North 27 degrees 09 minutes 33 seconds West 52.06 feet; thence North 65 degrees 33 minutes 00 seconds East 57.80 feet to a point; thence North 20 degrees 49 minutes 48 seconds East 359.51 feet to a rebar corner; thence leaving said East and with and along the South line of Wilson Street, a 50 foot public dedicated right of way South 66 degrees 16 minutes 19 seconds East 278.00 feet to a rebar corner; thence leaving said South right of way and with and along the West line of Lot 4, Fred W. Licker, Jr., (not recorded) South 23 degrees 53 minutes 00 seconds West 150.00 feet to a rebar corner; thence leaving said West line and with and along the South line of Lots 1 thru 4, Fred W. Licker, Jr. (not recorded) South 66 degrees 25 minutes 00 seconds East 172.00 feet to a rebar corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 595.90 feet to the true point of beginning. Said Tract 2 contains 5.70 acres.

#### AS-SURVEYD DESCRIPTION

##### Tract Three

A parcel of land situated in Chattanooga, Hamilton County, Tennessee as described in Deed Book 1899, page 376 Register's Office of Hamilton County (R.O.H.C.). Said parcel is known as Lots 1, 2, 3 and 4, Block 10, and Lots 1, 2, 3 and part of Lot 4, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C., together with abandoned portion of Arlington Avenue and part of abandoned Taylor Street. To find the point of beginning begin at the Northwest corner of an unopened 10 foot alley and the South right of way of Windsor Street; thence with and along the West line of said unopened alley South 23 degrees 51 minutes 37 seconds West 199.30 feet to a rebar corner; thence leaving said West line and with and along the North line of Lot 5, Block 10 and Lot 5, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C. and the right of way of Arlington Avenue North 66 degrees 10 minutes 20 seconds West 276.00 feet to a rebar corner; thence leaving said South line North 23 degrees 24 minutes 21 seconds East 7.97 feet to a rebar corner; thence continuing with and along the North line North 66 degrees 02 minutes 44 seconds West 89.00 feet to a rebar corner of Taylor Street abandoned; thence with and along the center line of Taylor Street abandoned North 23 degrees 52 minutes 23 seconds East 190.98 feet to a rebar corner; thence leaving said line and with and along the South line of Windsor Street, a 50 foot public dedicated right of way South 66 degrees 11 minutes 49 seconds East 365.00 feet to a spike corner and the point of beginning. Said parcel contains 1.65 acres.

#### PERSONAL PROPERTY

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

**EXHIBIT "B"**

**RIDER TO SECURITY INSTRUMENT  
FEE JOINDER**

**WARNING:** Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30; and 2 C.F.R. Parts 180 and 2424.

## **RIDER TO SECURITY INSTRUMENT FEE JOINDER**

*[Instructions: When using this form, amend the first paragraph of the Security Instrument to include the Ground Lessor as an accommodating "Joinder Party" to ensure proper indexing against the Ground Lessor among the land records.]*

This Rider ("Rider") is attached to and amends the Security Instrument entered into between \_\_\_\_\_ ("Borrower") and \_\_\_\_\_ ("Lender"), dated as of \_\_\_\_\_.

*[For a Mortgage OR Deed to Secure Debt, insert the following:]*

[This Rider is provided to secure to Lender the repayment of the Indebtedness, and the performance of the covenants and agreements of Borrower and Ground Lessor contained in the Loan Documents, Borrower and Ground Lessor mortgage, warrant, grant, convey and assign to Lender the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

**OR**

*[For a Deed of Trust, insert the following:]*

[Borrower and Ground Lessor, in consideration of the Indebtedness and the trust created by this Security Instrument, irrevocably grant, convey and assign to Trustee, in trust, with power of sale, the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

To the extent any provisions of this Rider conflict with any provisions in the body of the Security Instrument to which this Rider is attached, the provisions of this Rider shall prevail. Any terms in the body of the Security Instrument not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Security Instrument to which this Rider is attached, and for valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge and agree, and to induce the Lender to make the Loan to Borrower described in the Security Instrument, Borrower and Ground Lessor covenant and agree as follows:

1. Definitions

The following terms shall be added to Section 1 (Definitions) of the Security Instrument:

- (a) **"Fee Estate"** means that fee simple interest in the Land, presently held by Ground Lessor.
- (b) **"Ground Lease"** means that lease attached as Exhibit [ ], pursuant to which Borrower leases the Land from Ground Lessor, as such lease may be amended, modified, supplemented, renewed, and extended, but only with prior written approval of Lender and HUD.
- (c) **"Ground Lessor"** means that landlord, leasing the Land to Borrower pursuant to the Ground Lease.
- (d) **"Leasehold Estate"** means Borrower's interest in the Land and all other real property, existing pursuant to the Ground Lease, including the following:
  - (i) All rights of Borrower to renew or extend the term of the Ground Lease.
  - (ii) All amounts deposited by Borrower with Ground Lessor under the Ground Lease.
  - (iii) Borrower's right or privilege to terminate, cancel, surrender, modify, or amend the Ground Lease.
  - (iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances and improvements with respect to the Ground Lease.

The following term will be modified in Section 1 (Definitions) of the Security Instrument:

- (e) **"Mortgaged Property"** retains that same definition as provided in the Security Instrument, excepting that it is extended to also include Ground Lessor's present and future right, title and interest in and to those respective items (1-17), identified in the Security Instrument's definition of "Mortgaged Property."

2. Ground Lessor Joinder

- (a) Ground Lessor acknowledges and agrees that all rights and interests in the Fee Estate and Leasehold Estate and any indebtedness owed by Borrower (now or later existing) are encumbered by the Security Instrument.
- (b) By its execution and delivery of this Rider, Ground Lessor joins in the Security Instrument with the same intent and consequence as if Ground Lessor were originally a party to the Security Instrument, for the purpose of encumbering the Fee Estate with the lien of the Security Instrument, granting Lender a first priority

lien on the Fee Estate, and acknowledging the agreements, covenants and obligations set forth in this Rider are applicable to Ground Lessor.

- (c) Ground Lessor represents that Ground Lessor possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land and, to the extent not owned in fee by Borrower, the Improvements, free and clear of all Liens, encumbrances and charges except for those otherwise approved by Lender and HUD.
- (d) Ground Lessor represents to Lender and HUD that it has the power, authority and right to execute this Rider and to deed, grant, convey and assign a security interest in Ground Lessor's right, title and interest in the Mortgaged Property pursuant to the terms of this Rider and to keep and observe all of the terms of this Rider to be performed by Ground Lessor under this Rider.
- (e) Ground Lessor agrees that it shall not without the prior written approval of Lender and HUD:
  - (i) Convey, assign, transfer, pledge, or encumber any part of the Mortgaged Property or any interest in the Mortgaged Property, except as provided for under the Ground Lease.
- (f) Ground Lessor acknowledges all of the following:
  - (i) Lender has not made any representations or warranties to Ground Lessor with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
  - (ii) Ground Lessor assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Ground Lessor wishes to do so.
  - (iii) Lender will have no duty to disclose or report to Ground Lessor any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (g) At any time, after Ground Lessor receives from Lender or HUD a notice of an Event of Default under any of the Loan Documents, Ground Lessor has the right (but will not be obligated) to make any payment, perform any obligation and take any other action that Borrower would have the right to pay, perform or take under the applicable Loan Document which Ground Lessor deems necessary or desirable to cure the Event of Default.
- (h) Ground Lessor acknowledges and agrees that, upon the occurrence of an Event of Default, Lender or Trustee (if applicable) may take such action, without notice or demand, including foreclosure of the Mortgaged Property, as it deems advisable, to



protect and enforce its rights against Borrower, Ground Lessor, and in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of this Rider, the Security Instrument, and the other Loan Documents.

- (i) Ground Lessor has no personal liability for the repayment of the Indebtedness or the performance of any of Borrower's obligations under the Loan Documents. Ground Lessor's liability is expressly limited to the Mortgaged Property. However, nothing in this Rider limits the liability or obligations of Ground Lessor, in its capacity as landlord, under the Ground Lease.

3. Borrower's Acquisition of Fee Estate

- (a) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all parties, including Lender, having an interest in the Ground Lease consent in writing to the merger of estates.
- (b) If Borrower acquires the Fee Estate during any period in which HUD insures or holds the Security Instrument and Note, Borrower must promptly notify HUD and Lender (if applicable) of such acquisition.
- (c) Simultaneously with Borrower's acquisition of the Fee Estate, the lien of this Security Instrument automatically, without the necessity of any further conveyance or recording, continues to cover the Fee Estate and remains prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of this Security Instrument. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's attorneys' fees and costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject or further subject the Fee Estate to the first lien of this Security Instrument or to confirm and ratify such first lien, and must provide to Lender a title insurance policy insuring the lien of this Security Instrument as a first lien on the Fee Estate and the Leasehold Estate, as applicable.

Each signatory below hereby certifies that each of their statements and representations contained in this Rider and all their supporting documentation thereto are true, accurate, and complete, and that each signatory has read and understands the terms of this Rider. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**IN WITNESS WHEREOF**, Borrower and Ground Lessor have signed and delivered this Rider to the Security Instrument or have caused this Rider to the Security Instrument to be signed and delivered by their duly authorized representatives, as a sealed instrument.

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

By: \_\_\_\_\_  
Chairman \_\_\_\_\_

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole general partner

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT "C"**

### **COMMUNITY BENEFIT PROGRAM – BAYBERRY APARTMENTS**

#### **A. Community Benefit Program**

During the term of the Agreement, the Company will provide certain community benefits to residents of Bayberry Apartments, selected from the categories identified below. Each year, the Company will establish an annual budget of at least \$37,500 to provide a combination of resident services and security services for the benefit of residents of Bayberry.

#### **B. Resident Services**

The community benefit program will include certain resident services, developed in coordination with residents of Bayberry.

**Service Coordination.** As part of the service program, each resident will be asked to complete a comprehensive needs assessment that will assist in identifying the individual and family needs of the residents in the Bayberry community. The Company will hold an annual meeting with residents of Bayberry to discuss and select those programs and services that will offer the greatest benefit to residents. The Company will provide advance notice of the meeting to the City Council member and County Commission member in whose legislative district Bayberry Apartments is located. The on-site manager of Bayberry will also serve as liaison to these elected officials and will be available to meet upon request to discuss the status of resident services being provided under this program.

The Company anticipates contracting with one or more non-profit or other community support organizations to provide resident services under this program.

**Potential Services – Adult Tenants.** The programs considered for adult tenants of Bayberry will include:

1. Family Support
2. Life Skills
3. Targeted Coaching

**Potential Services – Children of Tenants and Tenants with Children.** The programs considered for tenants of Bayberry with children and for the children of tenants will include:

1. Family Support
2. Life Skills
3. Back to School Fair
4. After School Programs
5. Summer Programs
6. Targeted Coaching

**C. Enhanced Security**

Management of Bayberry Apartments will, from time to time, contract with off-duty police officers and/or private security services to provide on-site security.

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

**THIS AGREEMENT** is made and entered into as of the 15<sup>th</sup> day of February,

2018, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the "Board"); Alco Woodlawn Partners, L.P., 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").

**W I T N E S S E T H:**

**WHEREAS**, the Company is contemplating the improvement of the properites located at 2300 Wilson Street, 1101 Arlington Ave., and 2300 Windsor Street in Chattanooga, Hamilton County, Tennessee, including the renovation, equipping and furnishing of a multifamily, low income housing tax credit apartment project with approximately 163 one, two and three 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 a resolution adopted by the City, acting through its duly elected Council, which resolution delegates to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions; 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 and the City Treasurer, 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 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. According to Chapter 0600-10 of the Rules of the Tennessee State Board of Equalization, following renovation of the Property, such appraisal shall consist of two components: (i) the restricted use component (the "Restricted Income Value") which will be based on the Assessor's valuation of the Project's operating income, and (ii) the LIHTC subsidy component (the "LIHTC Subsidy Value") which will be based on the Assessor's valuation of the LIHTC subsidy provided to the Project by the Tennessee Housing Development Agency (collectively the Restricted Income Value and the LIHTC Subsidy Value are hereinafter referred to as the "Renovated Project Value"). 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. 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 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.

(a) Payments for Unrenovated Project (not applicable to County – see Section 4(b)(i)). For each of the years 2018 through 2032 (the "Real Property Tax Abatement Period"), the Company shall make In Lieu 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 2016 (the "Base Year") on the value of the Project, which value is \$3,667,200 (the "Unrenovated Project Value"). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the Unrenovated Project Value exclusive of the improvements made in connection with the renovation of the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Payments for Renovated Project.

(i) Applicability to the County; 100% In Lieu of Tax Payment to County. Notwithstanding any provisions in this Agreement to the contrary, the Company shall make In Lieu Payments to the County equal to the County property taxes that would be due on the Property if it were subject to taxation. The parties acknowledge that the provisions set forth in subsection (a), immediately above, and the provisions of paragraphs (ii) – (iv), immediately below,



were developed and presented to the City and the Board in contemplation of a request for reduced in Lieu Payments from the County. Due to timing considerations for the Project, the Company has elected to proceed without making a request for reduced In Lieu Payments to the County. The Company shall make In Lieu Payments to the County in an amount equal to the County property taxes that would be due on the Property if it were subject to taxation.

(ii) School Tax on Renovations (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated 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”) based upon the increase in the Renovated Project Value over the Unrenovated Project Value (the “Renovation Value”). The parties acknowledge and agree that the School Portion currently equates to 27.05% 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. The parties further acknowledge that the percentage of the School's Portion will vary as City and County tax rates change.

(iii) County General Fund Tax on Renovations (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, the Company shall also make In Lieu Payments in the amount equal to the Hamilton County general fund portion of the property taxes that would be due on the improvements to the Property if it were subject to taxation (the “County General Fund Portion”) based upon the increase in the Restricted Income Value over the Unrenovated Project Value. It being the intent that In Lieu

Payments shall not be made for the Hamilton County general fund portion of the property taxes that would be due on the LIHTC Subsidy Value of the Project.

(iv) Phase In Period (not applicable to County – see Section 4(b)(i)). After the renovation of the Project is completed and the Assessor of Property has determined the Renovated Project Value and reassessed the then renovated Property, additional In Lieu Payments on the improvements will be as follows:

Year	City General Fund <sup>(1)</sup>	County General Fund <sup>(1) (2)</sup>
	Renovation Value	LIHTC Subsidy Value
2018 – 2027	0%	0%
2028	20%	20%
2029	40%	40%
2030	60%	60%
2031	80%	80%
2032	100%	100%

<sup>(1)</sup> – The above percentages refer to the percent of the amount of taxes that would have been payable on the value if it were subject to property taxes.

<sup>(2)</sup> – These percentages will only apply if and to the extent approved by the County Commission of Hamilton County, Tennessee. In the event that no such resolution is adopted, the applicable percentage shall be 100%.

As noted above, during such years 2018 to 2032 (the "Improvements Tax Abatement Period"; the Improvements Tax Abatement and the Real Property Tax Abatement Period collectively called the "Tax Abatement Period"), the Company shall continue to pay the School Portion attributable to the Hamilton County Schools and the General Fund Portion attributable to the County general fund. For any periods before or after the Tax Abatement 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.

5. Penalties and Late Charges; Affordability Requirement. 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 and 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) The Company covenants as follows:

(i) The Project will be completed within twenty-four (24) months following the date of this Agreement.

(ii) After completion of the Project and during the Tax Abatement Period, 100% of the dwelling units in the Project will be set aside for occupancy by households 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 (the "Affordability Requirement").

(iii) After completion of the Project and during the Tax Abatement Period, the Project shall be maintained in habitable condition and in compliance with all applicable City and County ordinances and codes.

(iv) Beginning January 1, 2018, the Company shall provide services to tenants residing on the Property in accordance with the Community Benefit Plan set forth in Exhibit "C" (the "Community Benefit Plan")

(d)

(i) If the Company should fail to meet the Affordability Requirement under Section 5(c)(ii) above with respect to the Project and 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 (an "Affordability Event of Default"), the City and the County may then require the Company to pay an additional In Lieu Payment based upon the difference

between (i) the In Lieu Payments on the Property owed pursuant to Section 4 during the period of the continuance of such Affordability Event of Default and (ii) the full taxes that would have been payable on the Property if it were subject to property taxes multiplied by a fraction (expressed as a percentage), the denominator of which is the number of dwelling units at the Project subject to the Affordability Requirement and the numerator of which is the number of dwelling units that are not occupied by or available for occupancy by households 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. The County and the City shall look solely to the Company for any repayment obligations.

(ii) If the Company should fail to spend the annual budget for services under the Community Benefit Plan, the City and the County (if applicable) may then require the Company to pay an additional In Lieu Payment based upon the difference between (i) the Company's actual expenditures on services set forth in the Community Benefit Plan; and (ii) the annual budget for the Company's expenditures set forth in the Community Benefit Plan.

(iii) In no event shall the Company be required to pay more in In Lieu Payments than the Company would have paid in property taxes, if the Property were subject to property taxes.

6. Disbursements by the Treasurer and Trustee. 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. 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. 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 §48-101-302.

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 the City, the County and the Board, 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(c). Beginning on February 15, 2019 and on or before February 15 of each calendar year thereafter during this Agreement, the Company will also provide the City, the County and the Board with evidence of the Company's expenditures under the Community Benefit Plan. An independent audit of these certifications 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. 11<sup>th</sup> 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. Robert D. Hyde, Alco Woodlawn Partners, L.P., 35 Union Ave., Suite 200, Memphis, TN 38103; 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, 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.

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.

(a) 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 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.

(b) Notwithstanding the provisions of subsection (a), above, and notwithstanding any other provision in this Agreement or the Lease to the contrary, the Company may make a collateral assignment of all or any portion of its interests in this Agreement, the Lease and the Project for the benefit of one or more banks or other lenders that, from time to time, provide financing to the Company. Nothing in this Agreement or the Lease shall in any way restrict any sale or transfer of the leasehold interest and other interests of the Company in the Project pursuant to a judicial or non-judicial foreclosure sale as a result of the exercise of any one or more lender's rights under the applicable loan documents. The City, the County and the Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the City, County or Board, in consummating any financing for the Company that involves a pledge or assignment of the Company's interests in this Agreement, the Lease or the Project. Without limitation of the foregoing, the Mayor of the City, the Mayor of the County, and the Chairman of the Board, or any of their respective designees, are authorized, upon the Company's request, enter into or consent to such documents as are necessary to consummate such financing including,

without limitation, the "HUD Rider to Security Instrument" attached hereto as Exhibit "B" as well as additional consents to assignment, deeds of trust, estoppel certificates, subordination and non-disturbance agreements, affidavits and certificates, provided that any such documents are expressly non-recourse to the City, County and Board beyond the Board's interest in the Project.

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

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole general partner

By: \_\_\_\_\_

Title: President of A.P.

CITY OF CHATTANOOGA, TENNESSEE

By: \_\_\_\_\_

Mayor

Council chair

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**

**AS-SURVEYD DESCRIPTION**

**Tract One**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being described in Deed book 2003, Page 763 Register's Office of Hamilton County (R.O.H.C.) known as Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 13, and Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 16, together with an abandoned alley, City of Chattanooga Ordinance No. 6324 an part of abandoned Taylor Street, City of Chattanooga Ordinance No. 5180 Woodlawn Subdivision Plat Book 2, Page 3, R.O.H.C. To find the point of beginning begin at the Northeast intersection of Arlington Avenue and Windsor Street, a 50 foot dedicated right of way North 66 degrees 12 minutes 14 seconds West 293.16 feet to a rebar corner; thence leaving said right of way and with and along the centerline of Taylor Street abandoned aforementioned also being the East line of Estate of Milton Vincent, Deed Book 8971, Page 694 (R.O.H.C.) North 23 degrees 58 minutes 51 seconds East 398.76 feet to an iron pipe corner; thence leaving said East line and with and along the South line of Marvin and Ronald Berke, Deed Book 5587, Page 395 R.O.H.C. and the South line of Tract No. 2, Woodlawn Apartments South 66 degrees 26 minutes 35 seconds East being the Southeast corner of Marvin and Ronald Berke aforementioned a total of 292.50 feet to an iron pipe corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 399.98 feet to a spike corner and the point of beginning. Said parcel contains 2.68 acres.

**Tract Two**

A parcel of land situated in Chattanooga, Hamilton County, Tennessee being a part of Deed 1884, page 246 Register's Office of Hamilton County (R.O.H.C.). To find the true point of beginning begin at the remote point of beginning which is the northeast corner intersection of Windsor Street an Arlington Avenue; thence with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way North 23 degrees 53 minutes 33 seconds East 399.98 feet to an iron pipe corner and the true point of beginning; thence with and along the North line of Lot 1, Block 13, Woodlawn Subdivision, Plat book 2, Page 3, R.O.H.C., North 66 degrees 26 minutes 35 seconds West 260.00 feet to a point; thence leaving said North line and with and along the East line of Marvin and Ronald Berke, Deed Book 5587, page 395 R.O.H.C. with a series of calls and distances as follows: North 18 degrees 06 minutes 05 seconds East 95.12 feet to a point; thence North 03 degrees 39 minutes 00 seconds East 111.00 feet to a point; thence North 17 degrees 39 minutes 00 seconds East 90.00 feet to a point; thence North 11 degrees 24 minutes 00 seconds East 66.40 feet to an iron pipe corner and a point of curve; thence with a curve measured to the left an arc distance of 56.8 feet to a point of tangent, said curve has a radius of 42.2 feet a tangent of 33.63 feet and is subtended by a chord North 27 degrees 09 minutes 33 seconds West 52.06 feet; thence North 65 degrees 33 minutes 00 seconds 57.80 feet to a point; thence North 20 degrees 49 minutes 48 seconds East 359.51 feet to a rebar corner; thence leaving said East and with and along the South line of Wilson Street, a 50 foot public dedicated right of way South 66 degrees 16 minutes 19 seconds East 278.00 feet to a rebar corner; thence leaving said South right of way and with and along the West line of Lot 4, Fred W. Licker, Jr., (not recorded) South 23 degrees 53 minutes 00 seconds West 150.00 feet to a rebar corner; thence leaving said West line and with and along the South line of Lots 1 thru 4, Fred W. Licker, Jr. (not recorded) South 66 degrees 25 minutes 00 seconds East 172.00 feet to a rebar corner; thence leaving said South line and with and along the West right of way of Arlington Avenue, a 50 foot public dedicated right of way South 23 degrees 53 minutes 33 seconds West 595.90 feet to the true point of beginning. Said Tract 2 contains 5.70 acres.

#### AS-SURVEYD DESCRIPTION

##### Tract Three

A parcel of land situated in Chattanooga, Hamilton County, Tennessee as described in Deed Book 1899, page 376 Register's Office of Hamilton County (R.O.H.C.). Said parcel is known as Lots 1, 2, 3 and 4, Block 10, and Lots 1, 2, 3 and part of Lot 4, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C., together with abandoned portion of Arlington Avenue and part of abandoned Taylor Street. To find the point of beginning begin at the Northwest corner of an unopened 10 foot alley and the South right of way of Windsor Street; thence with and along the West line of said unopened alley South 23 degrees 51 minutes 37 seconds West 199.30 feet to a rebar corner; thence leaving said West line and with and along the North line of Lot 5, Block 10 and Lot 5, Block 14, Woodlawn Subdivision Plat Book 2, page 3 R.O.H.C. and the right of way of Arlington Avenue North 66 degrees 10 minutes 20 seconds West 276.00 feet to a rebar corner; thence leaving said South line North 23 degrees 24 minutes 21 seconds East 7.97 feet to a rebar corner; thence continuing with and along the North line North 66 degrees 02 minutes 44 seconds West 89.00 feet to a rebar corner of Taylor Street abandoned; thence with and along the center line of Taylor Street abandoned North 23 degrees 52 minutes 23 seconds East 190.98 feet to a rebar corner; thence leaving said line and with and along the South line of Windsor Street, a 50 foot public dedicated right of way South 66 degrees 11 minutes 49 seconds East 365.00 feet to a spike corner and the point of beginning. Said parcel contains 1.65 acres.

#### PERSONAL PROPERTY

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

**EXHIBIT "B"**  
**RIDER TO SECURITY INSTRUMENT**  
**FEE JOINDER**

**WARNING:** Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30; and 2 C.F.R. Parts 180 and 2424.

## **RIDER TO SECURITY INSTRUMENT FEE JOINDER**

*[Instructions: When using this form, amend the first paragraph of the Security Instrument to include the Ground Lessor as an accommodating "Joinder Party" to ensure proper indexing against the Ground Lessor among the land records.]*

This Rider ("**Rider**") is attached to and amends the Security Instrument entered into between \_\_\_\_\_ ("**Borrower**") and \_\_\_\_\_ ("**Lender**"), dated as of \_\_\_\_\_.

***[For a Mortgage OR Deed to Secure Debt, insert the following:]***

[This Rider is provided to secure to Lender the repayment of the Indebtedness, and the performance of the covenants and agreements of Borrower and Ground Lessor contained in the Loan Documents, Borrower and Ground Lessor mortgage, warrant, grant, convey and assign to Lender the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

**OR**

***[For a Deed of Trust, insert the following:]***

[Borrower and Ground Lessor, in consideration of the Indebtedness and the trust created by this Security Instrument, irrevocably grant, convey and assign to Trustee, in trust, with power of sale, the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in \_\_\_\_\_ County, State of \_\_\_\_\_, and described in Exhibit A to the Security Instrument.]

To the extent any provisions of this Rider conflict with any provisions in the body of the Security Instrument to which this Rider is attached, the provisions of this Rider shall prevail. Any terms in the body of the Security Instrument not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Security Instrument to which this Rider is attached, and for valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge and agree, and to induce the Lender to make the Loan to Borrower described in the Security Instrument, Borrower and Ground Lessor covenant and agree as follows:



1. Definitions

The following terms shall be added to Section 1 (Definitions) of the Security Instrument:

- (a) **"Fee Estate"** means that fee simple interest in the Land, presently held by Ground Lessor.
- (b) **"Ground Lease"** means that lease attached as Exhibit [ ], pursuant to which Borrower leases the Land from Ground Lessor, as such lease may be amended, modified, supplemented, renewed, and extended, but only with prior written approval of Lender and HUD.
- (c) **"Ground Lessor"** means that landlord, leasing the Land to Borrower pursuant to the Ground Lease.
- (d) **"Leasehold Estate"** means Borrower's interest in the Land and all other real property, existing pursuant to the Ground Lease, including the following:
  - (i) All rights of Borrower to renew or extend the term of the Ground Lease.
  - (ii) All amounts deposited by Borrower with Ground Lessor under the Ground Lease.
  - (iii) Borrower's right or privilege to terminate, cancel, surrender, modify, or amend the Ground Lease.
  - (iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances and improvements with respect to the Ground Lease.

The following term will be modified in Section 1 (Definitions) of the Security Instrument:

- (e) **"Mortgaged Property"** retains that same definition as provided in the Security Instrument, excepting that it is extended to also include Ground Lessor's present and future right, title and interest in and to those respective items (1-17), identified in the Security Instrument's definition of "Mortgaged Property."

2. Ground Lessor Joinder

- (a) Ground Lessor acknowledges and agrees that all rights and interests in the Fee Estate and Leasehold Estate and any indebtedness owed by Borrower (now or later existing) are encumbered by the Security Instrument.
- (b) By its execution and delivery of this Rider, Ground Lessor joins in the Security Instrument with the same intent and consequence as if Ground Lessor were originally a party to the Security Instrument, for the purpose of encumbering the Fee Estate with the lien of the Security Instrument, granting Lender a first priority

lien on the Fee Estate, and acknowledging the agreements, covenants and obligations set forth in this Rider are applicable to Ground Lessor.

- (c) Ground Lessor represents that Ground Lessor possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land and, to the extent not owned in fee by Borrower, the Improvements, free and clear of all Liens, encumbrances and charges except for those otherwise approved by Lender and HUD.
- (d) Ground Lessor represents to Lender and HUD that it has the power, authority and right to execute this Rider and to deed, grant, convey and assign a security interest in Ground Lessor's right, title and interest in the Mortgaged Property pursuant to the terms of this Rider and to keep and observe all of the terms of this Rider to be performed by Ground Lessor under this Rider.
- (e) Ground Lessor agrees that it shall not without the prior written approval of Lender and HUD:
  - (i) Convey, assign, transfer, pledge, or encumber any part of the Mortgaged Property or any interest in the Mortgaged Property, except as provided for under the Ground Lease.
- (f) Ground Lessor acknowledges all of the following:
  - (i) Lender has not made any representations or warranties to Ground Lessor with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
  - (ii) Ground Lessor assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Ground Lessor wishes to do so.
  - (iii) Lender will have no duty to disclose or report to Ground Lessor any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (g) At any time, after Ground Lessor receives from Lender or HUD a notice of an Event of Default under any of the Loan Documents, Ground Lessor has the right (but will not be obligated) to make any payment, perform any obligation and take any other action that Borrower would have the right to pay, perform or take under the applicable Loan Document which Ground Lessor deems necessary or desirable to cure the Event of Default.
- (h) Ground Lessor acknowledges and agrees that, upon the occurrence of an Event of Default, Lender or Trustee (if applicable) may take such action, without notice or demand, including foreclosure of the Mortgaged Property, as it deems advisable, to

protect and enforce its rights against Borrower, Ground Lessor, and in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of this Rider, the Security Instrument, and the other Loan Documents.

- (i) Ground Lessor has no personal liability for the repayment of the Indebtedness or the performance of any of Borrower's obligations under the Loan Documents. Ground Lessor's liability is expressly limited to the Mortgaged Property. However, nothing in this Rider limits the liability or obligations of Ground Lessor, in its capacity as landlord, under the Ground Lease.

3. Borrower's Acquisition of Fee Estate

- (a) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all parties, including Lender, having an interest in the Ground Lease consent in writing to the merger of estates.
- (b) If Borrower acquires the Fee Estate during any period in which HUD insures or holds the Security Instrument and Note, Borrower must promptly notify HUD and Lender (if applicable) of such acquisition.
- (c) Simultaneously with Borrower's acquisition of the Fee Estate, the lien of this Security Instrument automatically, without the necessity of any further conveyance or recording, continues to cover the Fee Estate and remains prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of this Security Instrument. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's attorneys' fees and costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject or further subject the Fee Estate to the first lien of this Security Instrument or to confirm and ratify such first lien, and must provide to Lender a title insurance policy insuring the lien of this Security Instrument as a first lien on the Fee Estate and the Leasehold Estate, as applicable.

Each signatory below hereby certifies that each of their statements and representations contained in this Rider and all their supporting documentation thereto are true, accurate, and complete, and that each signatory has read and understands the terms of this Rider. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**IN WITNESS WHEREOF**, Borrower and Ground Lessor have signed and delivered this Rider to the Security Instrument or have caused this Rider to the Security Instrument to be signed and delivered by their duly authorized representatives, as a sealed instrument.

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

By: \_\_\_\_\_  
Chairman \_\_\_\_\_

ALCO WOODLAWN PARTNERS, L.P.

By: Alco Properties, Inc., its sole general partner

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT "C"**

### **COMMUNITY BENEFIT PROGRAM – BAYBERRY APARTMENTS**

#### **A. Community Benefit Program**

During the term of the Agreement, the Company will provide certain community benefits to residents of Bayberry Apartments, selected from the categories identified below. Each year, the Company will establish an annual budget of at least \$37,500 to provide a combination of resident services and security services for the benefit of residents of Bayberry.

#### **B. Resident Services**

The community benefit program will include certain resident services, developed in coordination with residents of Bayberry.

**Service Coordination.** As part of the service program, each resident will be asked to complete a comprehensive needs assessment that will assist in identifying the individual and family needs of the residents in the Bayberry community. The Company will hold an annual meeting with residents of Bayberry to discuss and select those programs and services that will offer the greatest benefit to residents. The Company will provide advance notice of the meeting to the City Council member and County Commission member in whose legislative district Bayberry Apartments is located. The on-site manager of Bayberry will also serve as liaison to these elected officials and will be available to meet upon request to discuss the status of resident services being provided under this program.

The Company anticipates contracting with one or more non-profit or other community support organizations to provide resident services under this program.

**Potential Services – Adult Tenants.** The programs considered for adult tenants of Bayberry will include:

1. Family Support
2. Life Skills
3. Targeted Coaching

**Potential Services – Children of Tenants and Tenants with Children.** The programs considered for tenants of Bayberry with children and for the children of tenants will include:

1. Family Support
2. Life Skills
3. Back to School Fair
4. After School Programs
5. Summer Programs
6. Targeted Coaching

**C. Enhanced Security**

Management of Bayberry Apartments will, from time to time, contract with off-duty police officers and/or private security services to provide on-site security.