

**AGENDA**  
**MONTHLY MEETING OF**  
**THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD**  
**OF THE CITY OF CHATTANOOGA, TENNESSEE**

**Monday, February 19, 2024 @ 12:30 PM**

1. Call to Order.
2. Confirmation of Meeting Advertisement and Quorum Present.
3. Approval of the Minutes for the January 22, 2024, monthly meeting.
4. Recognition of Persons Wishing to Address the Board.
5. **DGA Shallowford PILOT Ratification**

A resolution of the Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee regarding a payment in lieu of taxes transaction with DGA Shallowford LP. **(HEB-2024-04)**

6. **TEFRA Hearing – Westside 1B Bond Issuance**

A resolution of the Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee relating to the issuance of multifamily housing revenue bonds for an amount not exceeding \$35 million to provide financing to One Westside Phase 1B, LP for the acquisition, construction, and equipping of an approximately 166-unit housing facility for low and moderate-income citizens to be located at 501 West 12th Street, Chattanooga, Tennessee. **(HEB-2024-05)**

7. **CNE**

A resolution rescinding Resolution No. HEB-2023-14 dated November 20, 2023, allocating and approving an award of \$1 million to Chattanooga Neighborhood Enterprise (CNE) from the Affordable Housing Fund to expand affordable housing across the City for low and moderate income individuals for 52 units or rental housing and 82 additional units in 2024. **(HEB-2024-06)**

8. Discussion – Bylaws.
9. Other Business.
10. Adjournment.



**HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD**  
**City of Chattanooga, Tennessee**  
**MONTHLY MEETING MINUTES**  
**John P. Franklin, Sr. Council Building**  
**Assembly Room**  
**1000 Lindsay Street**  
**Chattanooga, TN 37402**  
**for**  
**January 22, 2024**  
**12:35 p.m.**

Present were Board Members: Hicks Armor (Chair), Gregg T. Gentry (Vice-Chair), Richard Johnson (Secretary), Johnika Everhart, Brian Erwin, Hank Wells, and Dr. Patti Skates. Absent was Andrea Smith.

Also, present were Phillip A. Noblett (Counsel to the Board); Vickie Haley (Finance); Jake Toner and Martina Guilfoil (CNE); and Sandra Gober (Community Development).



Chair Armor called the meeting to order, confirmed the meeting advertisement, and established that a quorum was present to conduct business.



Chair Armor introduced and welcomed the newest board members: Dr. Patti Skates and Hank Wells. We are blessed to have both members.



**MINUTES APPROVAL FOR THE NOVEMBER 20, 2023, MEETING**

On motion of Mr. Johnson, seconded by Dr. Skates, the minutes of the November 20, 2023, monthly meeting were unanimously approved as submitted.



There was no one from the public wishing to make a comment.

**RESOLUTION**

On motion of Mr. Gentry, seconded by Mr. Wells,

**A RESOLUTION RATIFYING THE CHAIR'S ELECTRONIC SIGNATURE ON NOVEMBER 14, 2023, OF AN ENGAGEMENT OF AND DISCLOSURES BY UNDERWRITER RAYMOND JAMES RELATING TO THE DGA SHALLOWFORD BOND PROJECT. (HEB2024-01)**

This resolution makes Chair Armor's signature legal and this resolution is belt and suspenders of the action taken.

The motion carried.

**ADOPTED-January 22, 2024**

**RESOLUTION**

On motion of Mr. Johnson, seconded by Dr. Skates,

**A RESOLUTION RECOMMENDING A PILOT TERM OF TEN (10) YEARS (PLUS AN OPTION FOR ANOTHER TEN (10) FOR NEW, MIXED, INCOME-RESTRICTED AND MARKET RATE CONSTRUCTION TO CHATTANOOGA NEIGHBORHOOD ENTERPRISE, INC., FOR THE PROJECT LOCATED AT 2003 BAILEY AVENUE, CHATTANOOGA, TN 37404, CONSISTING OF APPROXIMATELY TWENTY (20) ONE (1) BEDROOM AND TWELVE (12) TWO (2) BEDROOM RESIDENTIAL RENTAL UNITS FOR APPROXIMATELY THIRTY-TWO (32) TOTAL RENTAL UNITS, BASED ON THE PILOT APPLICATION SUBMITTED TO THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT OF THE CITY OF CHATTANOOGA. (HEB2024-02)**

Typically, a PILOT would be for ten years. This PILOT has an option for an additional ten. Usually, it is a PILOT that holds the taxes at the same level for ten years so they can financially do it, but over the next four years it increases 25% per year. The second ten years would be built into the ten years. The difference in this project is that they agree to hold half the units at 80%

rents and seven units at 60% to HOME funds that are available. They are agreeing for a total of 20 years if they get the option. Normally, they include clawback provisions in an agreement like this that if they do not complete that, it is something the Board would consider if there was an option.

Mr. Erwin had a question about HOME fund requirements. Ms. Sandra Gober spoke about the HOME funds. These funds come directly to the City of Chattanooga from HUD. The City provides the funding to the non-profit organization in the development of the project, in exchange for accepting the money and using it into the project they are required by the regulations to keep the units affordable at certain rents to households at certain income levels and in this instance because of the amount we are putting into the project, it is a 20-year requirement. The rents and the income levels are established by HUD.

Mr. Johnson asked if there was anything on the block at Bailey Avenue now, existing structures? Ms. Gober said no, this is new construction. Dr. Skates asked how many are at 80% rate and how many at 60%? Ms. Gober explained that the seven that they are financing, those seven definitely will be at 60% and actually two of them will be even at 50%. Ms. Martina Guilfoil and Mr. Jake Toner will talk about how the other 30 will balance the income and limits that they are willing to place on the balance. With the PILOT, they are required that at least 50% of the units are always at 80% and lower.

Mr. Gentry asked if this was the first time we have done a 20 year or is there some historical precedent? Attorney Noblett stated this was done for Patten Towers as well.

### **PRESENTATION**

Ms. Guilfoil explained that the 20-year came up because there was the Shallowford Road project was asking for 20 years. They thought it made more sense because it mirrors their affordability restrictions. If you drive across town and you see some of the affordable housing developments falling into disrepair, part of the challenges that you are limited by HUD on the rent increases but operating expenses are going up so how do you marry how much money you are taking in and how much you are having to put out in operating. The 20 year PILOT will actually help resolve the restrictions on raising rents to cover increased costs. With the PILOT, you have less operating expenses going into paying taxes so you have more revenue coming in. It is easier to maintain the rent restrictions.

This project is part of an 84 package, three project deal, that has a variety of layer sources, which is how you get to affordability with ARP funding, funding from the Benwood Lyndhurst Foundation, HOME funds, and the PILOT.

Mr. Jake Toner spoke at this point. This is one of three projects that are packaged together. There are three separate buildings. This is a little over a half-acre land (4 x 50-foot lots consolidated); three buildings are (two 10-plexes and a 12-plex); 32 total units (20 one-bed units and 12 two bed units); 25 off street parking spaces, 9 on street, 1 accessible, and 4 bike spaces (39 total). The presentation is attached to these minutes showing the proposed rents and unit mix, proposed project budget, and summary.

Ms. Everhart asked if they were taking Section 8 vouchers. Ms. Guilfoil said yes, they accept Section 8 vouchers, but also this project is the first time they will actually have nine vouchers from CHA which will help people come in at 30% of their income up to 80%. Mr. Toner said this is project based and across the whole portfolio they also use Section 8, but is on a case by case basis.

In summary, the request will commit at least 50% of the units to households at 80% or less AMI. The projected initial annual cost savings of the PILOT will be \$53,000. The only way to replace this money without the PILOT is to raise rents. Without the PILOT, CNE cannot build this project and hold these rent levels. Without this PILOT, this deal does not work. Everything else in the layer of financing is negotiable and movable.

Mr. Johnson asked when do you hope to break ground? The permits are in hand. If the financing comes together and there are no delays, they will close on the 7<sup>th</sup> of February, but guess it may be another week. Ideally, the middle to third week of February they are ready to go. HOME funds approval will be on the 6<sup>th</sup>. Mr. Johnson asked if there were contingencies in place. Yes, they have construction contingencies in the budget and also these numbers have been updated several times over the course of this project. They have been validated by the contractor. Prices have increased significantly.

Mr. Erwin asked regarding once the property is constructed and leases are established with the residents, are those leases 12 month terms? Mr. Toner said yes. Dr. Skates asked how long will be construction? The budgeted timeline is 18 months plus a six month lease up. Mr. Toner has asked for 24 months on initial construction debt. Mr. Toner's hope is that it will come in significantly shorter. Mr. Toner will be happy within 18 months.

The motion carried.

**ADOPTED-January 22, 2024**

**RESOLUTION**

On motion of Mr. Wells, seconded by Mr. Johnson,

**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 THE CHATTANOOGA NEIGHBORHOOD ENTERPRISE, INC. (THE "COMPANY") FOR THE PROJECT LOCATED AT 2003 BAILEY AVENUE AND TO ENTER INTO AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES WITH THE COMPANY. (HEB2024-03)**

Attorney Noblett explained that the Lease Agreement does include provisions to consider an option for an additional ten years, but it is not automatic and includes provisions for clawbacks in the event that it is not done as agreed. This body has the authority under law to be able to have title to the property so there are no taxes. PILOT stands for Payments in Lieu of Ad Valorem Taxes. That payment will be made not to the full value of the property during the term of this agreement but based upon the PILOT payments.

There being no further discussion, the motion carried.

**ADOPTED-January 22, 2024**

### **DISCUSSION OF BYLAWS**

Mr. Jermaine Freeman is not present but was attempting to come speak about things they are wanting to have as potential changes to the Bylaws. Attorney Noblett explained that we have a nine member body. The issue was that it only took four to do business. It takes four to do any action which is on page three of the Bylaws. A requirement is that it should take five yes or five no votes to adopt any action by the Board.

Chair Armor discussed the issue of the Bylaws that if it says four votes, it does not mean that you can take a vote without a quorum. Attorney Noblett said no that it is not saying that. If there are nine people, you have to have five for a quorum. If on that same day, there are five people and the vote is three to two, there is not four so the majority would not rule. Attorney Noblett said yes. Where you could use it to do business, it now can hinder you from doing business because it will now allow a simple majority.

Attorney Noblett explained, do you want to allow something less than a quorum of the Board to affect the vote of the Board? Some of the boards Attorney Noblett has dealt with deal with the aspect that you are saying you have to have a minimum of a quorum of the body. So, five members will be able to have action taken. If you do not get that on the first time, then you come back at the following meeting to try to see if you can get a quorum at the following meeting based upon either reconsideration or review at the next meeting. If you do not get it then, then it does not pass.

Mr. Gentry explained you have to have five for a quorum, so three of the five is a quorum, so you can have three or at least four. If you go to nine, it requires five. Attorney Noblett thinks that a majority of people have to act and if you do not get that at the meeting, then what do you do?

Chair Armor says that it raises the majority – simple majority. It is redefining simple majority. If five votes are here, then we can do business, but typically, it would allow three of the five to conduct business. Here, if we could not get a fourth vote, then you really cannot pass them.

There was discussion about the issues with a quorum. Ms. Everhart asked if there could be a parameter if it is priority business. Attorney Noblett explained that the state law requires only a seven member board for HEB. Here the City Council thought it good to have someone from each district and the IDB. Chair Armor asked who chooses priority? Ms. Everhart asked about deadlines.

After further discussion about simple majority, Attorney Noblett explained that the City Council has in their Charter the requirement that it takes five votes to pass something. Mr. Gentry explained the majority process. Attorney Noblett explained the cons which would be if you are dealing with a bond issuance. The bond folks want to make sure that it is the body that has approved this issuance and they want a certification that it has passed.

After further discussion, Mr. Gentry explained that we have five members here with a quorum, the minimum is five. If it is a four to one vote, there is no movement. The Board members discussed further whether five would carry or defeat. The Board members liked five yes and five no. The Board decided to have a redline version of the Bylaws for discussion at the next meeting with also Mr. Freeman's changes. Also, page four needs to be corrected about the third Monday of the meetings.



**OTHER BUSINESS**

Dr. Skates was interested in the education piece of this Board, and there was discussion about Gateway. Chair Armor explained that it depends on what comes before the Board. The housing piece is the majority. The education piece is fair. Attorney Noblett explained the school tax portions in PILOTs. It was decided that there will be an educational session about the Board to be held before next month's meeting.



After further discussion, the meeting adjourned at 1:25 PM.

Respectfully submitted,

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***Richard A. Johnson, Secretary***

APPROVED:

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***Hicks Armor, Chair***

# 2003 Bailey Avenue: PILOT Presentation

November 28, 2023



CHATTANOOGA  
NEIGHBORHOOD  
ENTERPRISE

A CITY FOR ALL OF US





# Project Overview

- 0.558 acres of land (4 x 50-foot lots consolidated)
- Three buildings (two 10-plexes and a 12-plex)
- 32 total units (20 one-bed units and 12 two bed units)
- 25 off street parking spaces, 9 on street, 1 accessible, and 4 bike spaces (39 total)



# Proposed Rents and Unit Mix

Rents & Unit Mix	BRs	Units	CHA Vchr	Rents	80% Units	Rents	HOME High	Rents	HOME Low	Rents
	1	20	4	\$ 858	11	\$ 1,195	4	\$ 858	1	\$ 685
	2	12	4	\$ 989	6	\$ 1,434	2	\$ 989	0	\$ 818
Totals:		32	8		17		6		1	

RENT RESTRICTION SUMMARY			SQUARE FOOT SUMMARY		
	#	%		#	%
CHA Vchr	8	25%	CHA Vchr	5030	26%
80% Units	17	53%	80% Units	10489	54%
HOME High	6	19%	HOME High	3516	18%
HOME Low	1	3%	HOME Low	503	3%
Total @ 80% or less	24	75%	Total @ 80% or less	19538	100%
Total Units	32	100%	Total Res Sqft	19538	100%

According to Zumper.com as of 11/13/23, average Chattanooga downtown submarket rents are \$1439 for a one bed and \$2100 for a two bed

# Proposed Project Budget

USES - Development Budget		
Acquisition & Related Costs		\$ 228,000
Building, Site, Off Site		\$ 4,299,000
Soft & Financing		\$ 1,373,105
Total Development Uses		\$ 5,900,105
SOURCES - Development Financing		
Construction Loan		\$ 3,642,105
HOME Funds		\$ 630,000
Land		\$ 228,000
CNE Cash + Outside Equity Contributions		\$ 1,400,000
Total Development Sources		\$ 5,900,105



# Summary

- The request is to commit at least 50% of the units to households at 80% or less Area Median Income in exchange for the PILOT.
- The projected initial *annual* cost savings of the PILOT to the project will be \$53,000.
- The only way to replace this money without the PILOT is to raise rents.
- Without the PILOT, CNE cannot build this project and hold these rent levels.



**RESOLUTION OF THE HEALTH, EDUCATIONAL AND  
HOUSING FACILITY BOARD OF THE  
CITY OF CHATTANOOGA, TENNESSEE  
REGARDING A PAYMENT IN LIEU OF TAXES TRANSACTION  
WITH DGA SHALLOWFORD LP**

WHEREAS, the Board of Directors of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (the "Board"), has met pursuant to proper notice; and

WHEREAS, to induce DGA Shallowford LP, a Tennessee limited partnership (the "Company") to construction an approximately 96-unit housing facility for low and moderate-income citizens to be known as Shallowford Pointe located in Chattanooga, Tennessee (the "Project"), the Board (i) will acquire certain real and personal property located in the City of Chattanooga, Tennessee and (ii) will lease said property to the Company on the terms and conditions set forth in the Lease referenced herein; and

WHEREAS, there has been submitted to the Board a form of Agreement for Payments in Lieu of Ad Valorem Taxes for Low-Income Housing Tax Credit (LIHTC) Project (the "PILOT Agreement") and a form of Lease between the Company and the Board (the "Lease" and, together with the PILOT Agreement, the "PILOT Documents"), which provide for certain payments in lieu of tax as provided therein and which the Board proposes to execute to carry out the transaction described above, copies of which shall be filed with the records of the Board.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE:

1. It is hereby found and determined that the acquisition and ownership of the Project will promote industry, trade, commerce and housing in the State of Tennessee and will increase the availability of affordable housing and employment in the City of Chattanooga, Tennessee.

2. The Chairman or Vice Chairman of the Board is hereby authorized and directed to execute, and the Secretary or Assistant Secretary of the Board is authorized to attest, and either is authorized and directed to deliver the PILOT Documents to the Company and to the City of Chattanooga, as applicable.

**HEB-2024-04**

3. The Board is hereby authorized and directed to own the Project pursuant to the terms of the Lease.

4. The PILOT Documents shall be in substantially the forms submitted, which are hereby approved, with such completions, omissions, insertions and changes as may be approved by the officer executing them, his or her execution to constitute conclusive evidence of his or her approval of any such omissions, insertions and changes.

5. The officers of the Board are hereby authorized and directed to execute, deliver and file such other certificates and instruments and to take all such further action as they may consider necessary or desirable in connection with the consummation of the transactions described above, including, without limitation, executing such documents as any lender of the Company may request to preserve their liens on the Project.

6. Any authorization herein to execute any document shall include authorization to record such document where appropriate.

7. All other acts of the officers of the Board which are in conformity with the purposes and intent of this resolution are hereby approved and confirmed.

I hereby certify that attached hereto is a resolution of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, duly and lawfully adopted by its Board of Directors on February 19, 2024, at a meeting at which a quorum was acting throughout and I furthermore certify that such resolution has not been amended or modified in any respect.

Dated: February 19, 2024

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

By: \_\_\_\_\_  
Name: Hicks Armor  
Title: Chair

ATTEST:

\_\_\_\_\_  
Richard Johnson, Secretary

36716958.2



THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF  
THE CITY OF CHATTANOOGA, TENNESSEE  
(a Tennessee public nonprofit corporation)

TO

DGA SHALLOWFORD LP  
(a Tennessee limited liability company)

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LEASE

DATED AS OF \_\_\_\_\_, 2024

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This instrument prepared by:  
BASS, BERRY & SIMS PLC (RES)  
900 S. Gay Street, Suite 1700  
Knoxville, Tennessee 37902

## LEASE

This Lease (the "Lease"), made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2023, by and between THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, a public nonprofit corporation organized and existing under the laws of the State of Tennessee ("Lessor"), and DGA SHALLOWFORD LP, a Tennessee limited liability company ("Lessee").

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

WHEREAS, Lessor is a public nonprofit corporation and a public instrumentality of the City of Chattanooga, Tennessee, and is authorized under Sections 48-101-301 to 48-101-318, inclusive, Tennessee Code Annotated, as amended (the "Act"), to acquire, whether by purchase, exchange, gift, lease, or otherwise, and to own, lease and dispose of properties for certain purposes identified in the Act; and

WHEREAS, in order to encourage Lessee to cause the construction and operation of a housing project for low- and moderate-income persons known as Shallowford Pointe located in the City of Chattanooga, Tennessee (the "Project"), thereby furthering the purposes of the Act, Lessor desires to lease to Lessee and Lessee desires to rent from Lessor certain real property hereinafter more particularly described, together with the improvements thereon, on the terms and conditions hereof; and

NOW, THEREFORE, Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and the covenants and agreements hereinafter contained to be kept and performed by Lessee, does by these presents demise, lease and let unto Lessee, and Lessee does by these presents hire, lease and rent from Lessor, for the Term (as defined below) and upon the conditions hereinafter stated, the real property described in Exhibit A attached hereto, together with all facilities and improvements now existing or hereafter constructed thereon by Lessee or otherwise;

UNDER AND SUBJECT, however, to deed restrictions, covenants, easements, reservations, rights of way and other encumbrances applicable to the real property to be leased and existing as of the date hereof and any other encumbrance hereafter existing that is not created by Lessor; and

UNDER AND SUBJECT to the following terms and conditions:

### ARTICLE I. Definitions

Section 1.01 In addition to the words, terms and phrases elsewhere defined in this Lease, the following words, terms and phrases as used in this Lease shall have the following respective meanings:

"Act" shall mean Sections 48-101-301 to 48-101-318, inclusive of Tennessee Code Annotated, as amended.

"Basic Rent" shall mean the amounts described in Section 4.01.

"Buildings" shall mean the Buildings to be constructed on the Leased Land by Lessee pursuant to Article XI.

"City" shall mean the City of Chattanooga, Tennessee.

"Completion Date" shall mean the earlier of (i) the third anniversary of the commencement of construction on the Project, subject to any delays caused by Force Majeure, or (ii) the date that the Project

has achieved stabilization, as evidenced by the achievement of at least 80% occupancy. Lessee shall provide a certificate to Lessor evidencing the Completion Date no later than thirty (30) days after the occurrence of the Completion Date.

"County" shall mean Hamilton County, Tennessee.

"Force Majeure" means fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the applicable party's reasonable control. Where this Lease expressly provides that a party's obligations are subject to Force Majeure, then delay or non-performance on the part of such party will be excused upon the occurrence and during the continuance of such event of Force Majeure, provided that such party promptly gives the other party written notice of the occurrence and abatement of such event of Force Majeure.

"Investor Limited Partner" shall mean [Pinnacle Bank, a Tennessee banking corporation], and its successors and assigns.

"Lease" shall mean this instrument as originally executed or as it may from time to time be supplemented or amended by one or more instruments supplemental hereto.

"Leased Land" shall mean the real property described in Exhibit A attached hereto.

"Leased Property" shall mean the Leased Land, together with the Buildings and related improvements.

"Lender" shall mean [Walker & Dunlop, LLC, a Delaware limited liability company], and its successors and assigns.

"Lessee" shall mean DGA Shallowford LP, a Tennessee limited partnership.

"Lessor" shall mean The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, a Tennessee public nonprofit corporation.

"PILOT Agreement" shall mean that certain Agreement for Payments in Lieu of Ad Valorem Taxes for Low-Income Housing Tax Credit (LIHC Project) by and among Lessor, Lessee and the City dated as of \_\_\_\_\_, 2024.

"Tax Year" shall mean each annual period beginning on January 1 of each year and ending on December 31 of that year.

"Term" shall mean the term described in Article III.

**ARTICLE II.**  
Representations of Lessee

Section 2.01 Lessee makes the following representations and warranties to induce Lessor to enter into this Lease:

(a) Lessee is a limited partnership duly formed, existing and in good standing under the laws of the State of Tennessee, 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 Lease and, when executed and delivered by the parties thereto, this Lease will constitute the valid and binding obligation of Lessee enforceable in accordance with its terms.

(b) Neither the execution and delivery of this Lease, nor the consummation of the transactions contemplated herein by Lessee, nor the fulfillment of or compliance with the terms and conditions of this Lease, does or will conflict with or result in a breach of the terms, conditions or provisions of any restriction or internal governing document of Lessee or any agreement or instrument to which Lessee 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 Lessee under the terms of any instrument or agreement.

(c) There are no proceedings pending, or to the knowledge of Lessee threatened, against or affecting Lessee 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 Lessee, or the ability of Lessee to perform its obligations under this Lease. Lessee 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 Lessee that would constitute an Event of Default under this Lease, as defined in Article XIV, or which, with the lapse of time or with the giving of notice, or both, would become such an Event of Default.

(e) To the knowledge of Lessee, and in reliance upon, and except as disclosed in, an independent third-party report obtained by Lessee, there are no substances, materials, wastes, pollutants or contaminants located on the Leased Property that are regulated under any environmental law or regulation except those materials and substances that are maintained in compliance with such laws and regulations, and Lessee shall not permit material quantities of such substances, materials, wastes, pollutants or contaminants to exist on the Leased Property during the Term of this Lease except in compliance with such laws and regulations.

### **ARTICLE III.** **Lease Term**

Subject to the provisions contained in this Lease, this Lease shall be in full force and effect for a Term commencing on the date hereof and ending on the fifteenth (15<sup>th</sup>) anniversary of the Completion Date, unless terminated earlier in accordance with the terms hereof. Lessee shall provide a certificate to Lessor evidencing the Completion Date no later than thirty (30) days after the occurrence of the Completion Date.

Notwithstanding the foregoing, the Term of this Lease may be terminated upon exercise by Lessee of the purchase option described in Article XV hereof.

### **ARTICLE IV.** **Rent**

**Section 4.01 Basic Rent.** Lessee will pay to Lessor without notice or demand, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, as Basic Rent on each January 1 during the Term, the sum of \$1.00. Lessor acknowledges that Lessee has prepaid the Basic Rent for the Term on the date hereof.

**Section 4.02 Additional Rent.** Lessee agrees to pay, as additional rent, all other amounts, liabilities and obligations which Lessee herein assumes or agrees to pay, with the costs thereof to be

amortized over the Term of this Lease. Lessor will execute and deliver commercially reasonable documents pledging its interest in the Leased Property, by joinder or otherwise, in connection with Lessee's financing or refinancing of the Leased Property. In the event of any failure on the part of Lessee to pay any amounts, liabilities or obligations described in this paragraph, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of the Basic Rent.

## **ARTICLE V.**

### **Compliance with Laws; Permitted Contests; Lessee's Acceptance of Leased Property; Reports; Net Lease**

**Section 5.01** **Compliance with Laws.** Lessee shall throughout the Term and at no expense to Lessor promptly cure any violations under all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities, which are or shall become lawfully applicable to the Leased Property, the repair and alteration thereof, and the use or manner of use of the Leased Property, whether or not such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not they shall involve any change of governmental policy or shall require structural or extraordinary repairs, alterations or additions, irrespective of the cost thereof.

**Section 5.02** **Permitted Contests.** Lessee shall not be required to comply or cause compliance with the laws, ordinances, orders, rules, regulations or requirements referenced in Section 5.01, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

**Section 5.03** **Acceptance of Leased Property.** Lessee acknowledges that, as between Lessor and Lessee, it has examined the Leased Land described in Exhibit A attached hereto and the remaining Leased Property and the state of Lessor's title thereto prior to the making of this Lease and knows the condition and state thereof, including, without limitation, the environmental and soil conditions, as of the first day of the term of this Lease, and accepts the same in said condition and state; that no representations as to the condition or state thereof have been made by representatives of Lessor; and that in entering into this Lease, Lessee is relying solely upon its own examination thereof.

**Section 5.04** **Net Lease.** This is a "net lease" and the Basic Rent, Additional Rent and all other sums payable hereunder to or for the account of Lessor shall be paid promptly and without set off, counterclaim, abatement, suspension, deduction, diminution or defense.

## **ARTICLE VI.**

### **Title and Tax Benefits**

**Section 6.01** **No Conveyance of Title by Lessor.** Lessor covenants and agrees that, except as set forth herein, during the Term of this Lease, it will not convey, pledge, encumber or suffer or permit the conveyance of, by any voluntary act on its part, its title to the Leased Property to any person, firm, corporation, or other entity whatsoever, irrespective of whether any such conveyance or attempted conveyance shall recite that it is expressly subject to the terms of this Lease unless such conveyance is consented, in writing, to by Lessee and its mortgagee. Lessor will not create any lien, encumbrance or charge upon its interest in the Leased Property except for any such lien, encumbrance or charge otherwise created by this Lease or consented to by Lessee.

Section 6.02 Tax Benefits. The parties hereto acknowledge and agree that, during the Term, Lessee shall be deemed to exclusively own the Leased Property for federal tax purposes and Lessee alone shall be entitled to all federal and state tax attributes of ownership thereof, including, without limitation, the right to claim deductions for depreciation or cost recovery, the right to claim the federal low-income housing tax credits available to the Lessee under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”) and the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Leased Property. Lessor shall execute and deliver other and further certificates, documents, and amendments to this Lease as reasonably requested by Lessee to confirm and establish that Lessee is the owner of the Leased Property for federal income and state franchise and excise tax purposes.

**ARTICLE VII.**  
Taxes and Other Charges

Section 7.01 Taxes and Other Governmental Charges. Lessee agrees, subject to the provisions of Section 7.04, to pay and discharge, as additional rent, punctually as and when the same shall become due and payable without penalty, all ad valorem taxes that at any time during the Term shall be or become due and payable by Lessor or Lessee and that shall be levied, assessed or imposed upon, or that shall be or become liens upon, the Leased Property or any portion thereof or any interest of Lessor or Lessee therein, under and by virtue of any present or future law, statute, regulation or other requirement of any governmental authority.

Section 7.02 Lessee Subrogated to Lessor's Rights. To the extent of any payments of additional rent by Lessee under this Article VII, Lessee shall be subrogated to Lessor's rights in respect to the proceedings or matters relating to such payments, and any recovery in such proceedings or matter shall be used to reimburse Lessee for the amount of such additional rent so paid by Lessee.

Section 7.03 Utility Services. Lessee agrees that Lessor is not, nor shall it be, required to furnish to Lessee or any other user of the Leased Property any gas, water, sewer, electricity, light, heat, power or any other facilities, equipment, labor, materials or services of any kind pursuant to this Lease and Lessee agrees that it shall pay all costs and expenses related to the foregoing.

Section 7.04 Payments in Lieu of Taxes.

(a) Recognition of Tax Status. Lessee recognizes that under present law, including specifically Section 48-101-312 of Tennessee Code Annotated, the properties owned by Lessor are exempt from all taxation in the State of Tennessee.

(b) Administrative Provisions. In furtherance of the agreements in this Section, it is agreed by and between the parties hereto that Lessee, in cooperation with Lessor, shall cause all of the Leased Property, including but not limited to, the Leased Land and the Buildings, and each expansion of any Building, to be valued and assessed separately by the assessor or other official or officials charged with the responsibility of assessing privately owned property in the area where the Leased Property is located at the time such privately owned property is valued or assessed. Lessee in cooperation with Lessor shall cause to be applied to the appropriate taxable value of each such portion of the Leased Property the tax rate or rates that would be applicable for state and local tax purposes if the property were then privately owned, and shall cause the County trustee or other official or officials charged with the responsibility of collecting taxes to submit annually to Lessor and Lessee a statement of the taxes which would otherwise then be chargeable to each such portion of the Leased Property. The right is reserved to Lessee to the same extent as if Lessee were the owner of the Leased Property to contest the validity or amount of any such assessment.

(c) Payments in Lieu of Taxes. In addition to Basic Rent and Additional Rent hereunder, Lessee and Lessor agree that Lessee shall make payments in lieu of taxes to the City and the County in accordance with the terms of the PILOT Agreement.

Amounts payable with respect to any partial Tax Years included within the Term will be prorated based upon the actual number of days included within such Tax Year. Any payment due with respect to a Tax Year that is not paid prior to the termination or expiration of this Lease shall not be extinguished as a result of such termination or expiration and shall survive such termination or expiration.

Notwithstanding anything to the contrary contained in this Section, this Lease shall not be extended except pursuant to an amendment in writing and executed by both the Lessor and Lessee. Any reduction in taxes pursuant to this Lease and the PILOT Agreement shall not apply with regard to any other tax assessed against Lessee, its income, its other real property or its personalty. In the event Lessee assumes ownership of the Leased Property, Lessee shall begin paying all applicable ad valorem and other taxes directly to the City and the County, as assessed, but shall not make, from the date of such acquisition, any in lieu payments with respect to such property other than those payments that were unpaid at the time of such acquisition.

Notwithstanding anything to the contrary contained in this Section or in the PILOT Agreement, in the event that Lessee fails to complete the construction of the Buildings in accordance with Article XI hereof or the Leased Property becomes ineligible for federal low-income housing tax credits due to a violation of the use restrictions (related to federal low-income housing tax credits) applicable to the Leased Property, then Lessee shall make a payment in lieu of taxes with respect to each Tax Year remaining in the Term on behalf of the Lessor to the City and the County in an amount equal to the ad valorem taxes that would otherwise be payable with respect to the Leased Property if such Leased Property were owned by Lessee.

(d) Credit for Taxes Paid. Nothing contained in this Section 7.04 or the PILOT Agreement is intended or shall be construed to require the payment by Lessee of any greater amounts in lieu of taxes than would be payable as taxes if the Leased Property were owned by Lessee. It is accordingly understood and agreed that the amount payable by Lessee in any year pursuant to the PILOT Agreement or under the provisions of this Section 7.04 shall be reduced by the amount of any ad valorem taxes lawfully levied upon the Leased Property or any part thereof, or upon Lessee's leasehold estate therein, and actually paid by Lessee pursuant to the requirements of Section 7.01 hereof to the City and the County and to the extent that any such tax payments paid by Lessee pursuant to the requirements of Section 7.01 hereof for any year shall exceed the in-lieu-of-tax payments for such year otherwise provided in this Section 7.04 the amount payable by Lessee in any subsequent year under the provisions of this Section 7.04 shall be reduced by such excess amount.

(e) Intentionally omitted.

(f) Reports. In addition to any reports required pursuant to the PILOT Agreement, on behalf of Lessor, Lessee shall, during the term of this Lease, submit on or before October 1 of each year to the Tennessee State Board of Equalization the annual report required to be submitted by it pursuant to the Act and shall also submit such other reports that may be required by applicable law relating to this Lease.

(g) Payment Upon Termination or Expiration. Upon the termination of this Lease for any reason during a Tax Year, Lessee shall pay a pro-rated amount of the payments in lieu of taxes, if any, required by this Section 7.04 for the period that this Lease is in effect and for which no payments in lieu of taxes have been made up to the date of such termination.

(h) Cessation of Business or Foreclosure. Except in the event Lessee shall terminate this Lease pursuant to Article IX of this Lease, in the event Lessee ceases the active operation (excluding temporary cessations due to Force Majeure events) of a low-income housing facility for eligible residents at the Leased Property, and notwithstanding any provision herein to the contrary, Lessee shall make payments in lieu of taxes beginning as of the date Lessee ceases such operation equal to the ad valorem taxes that Lessee otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by Lessee.

Section 7.05 Permitted Contests. Lessee shall not be required to pay any tax or assessment against the Leased Property or any part thereof, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings which shall operate to prevent the collection of the tax or assessment so contested or resulting from such contest and the sale of the Leased Property or any part thereof to satisfy the same. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

#### **ARTICLE VIII.** Maintenance and Repair

Lessor shall not be required to rebuild or to make any repairs, replacements or renewals of any nature or description to the Leased Property or to make any expenditures whatsoever in connection with this Lease or to maintain the Leased Property in any way. Lessee expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of Lessor.

Lessee shall keep and maintain in good order, condition and repair (including any such repair as is required due to fire, storm or other casualty) the Leased Property and every part thereof and any and all appurtenances thereto. Lessee shall save Lessor harmless on account of claims for mechanics and materialmen's liens in connection with any work by Lessee, and any such liens shall exist only against Lessee's leasehold interest and shall be discharged, by bond or otherwise, within sixty (60) days after filing. Lessee shall keep and maintain the Leased Property in accordance with all directions, rules and regulations of the proper officials of the government agencies having jurisdiction, at the sole cost and expense of Lessee, provided that Lessee shall not be required to repair or restore the Leased Property following material damage from a fire or other casualty except that Lessor may require Lessee to remove any debris from the Leased Property following a fire or other casualty.

#### **ARTICLE IX.** Condemnation

If during the Term, all or any part of the Leased Property be taken by the exercise of the power of eminent domain or condemnation, Lessee shall be entitled to and shall receive the entire award for the taking. If title to or control of all of the Leased Property shall be taken by the exercise of the power of eminent domain or condemnation, or if such use or control of a substantial part of the Leased Property shall be taken as to result in rendering a substantial part of the Leased Property untenable or of materially reduced value to Lessee, Lessee may terminate this Lease and exercise the purchase option pursuant to Article XV by giving written notice to the Lessor and thereafter shall have no further liability hereunder except as specifically provided herein, provided, as a condition of such termination, Lessor may require Lessee to remove all or a portion of the improvements from the remaining portion of the Leased Property.



## **ARTICLE X.**

### **Insurance and Indemnification**

**Section 10.01 Insurance.** Lessee shall carry commercial general liability insurance covering the Leased Property and the use and occupancy of the same in a company or companies licensed to do business in Tennessee under a policy satisfactory to Lessor both as to amount and coverage and shall provide evidence of same to Lessor. Lessor shall be listed as an additional insured on such policy. Lessee shall also insure all improvements on the Leased Property at their full replacement value, with Lessor being included as an additional insured, and Lessee shall provide evidence of same to Lessor. Each policy described above shall not be canceled without first giving Lessor not less than thirty (30) days prior written notice. Lessee shall provide to Lessor evidence of all insurance policies contemplated by this Section, including, upon request, annual certificates of continued coverage.

**Section 10.02 Indemnification.** Lessee covenants and agrees, at its expense, to pay, and to indemnify and save Lessor and its directors, agents and employees (collectively, the "Indemnified Parties") harmless against and from any and all claims by or on behalf of any person, firm, corporation, or governmental authority, arising from the occupation, use, possession, conduct or management of or from any work or activity done in or about the Leased Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Leased Property or the occupancy or use thereof. Lessee also covenants and agrees, at its expense, to pay, and to indemnify and save the Indemnified Parties harmless against and from, any and all claims, costs or expenses arising from (i) any condition, including any environmental condition, now existing or hereafter arising, on the Leased Property, (ii) any breach or default on the part of Lessee in the performance of any covenant or agreement to be performed by Lessee pursuant to this Lease, (iii) any act or negligence of Lessee, or any of its agents, contractors, servants, employees or licensees, (iv) any disputes, demands or claims related to the title of the Leased Land or any liens or other encumbrances affecting the Leased Land (other than claims originating from an action in violation of Section 6.01 hereof), or (v) any accident, injury or damage whatever caused to any person, firm or corporation in or about the Leased Property and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section. In the event that any action or proceeding is brought against any Indemnified Party by reason of any such claims, Lessee, upon notice from such Indemnified Party, covenants to resist or defend such action or proceeding. Notwithstanding anything in this Lease to the contrary, Lessee shall not be required to indemnify any of the Indemnified Parties in the event of any acts of gross negligence or willful misconduct or intentional misconduct of any of the Indemnified Parties or for any claim or liability which the Indemnified Parties was not given the opportunity to contest. The indemnification provided shall survive termination of this Lease.

## **ARTICLE XI.**

### **Construction of Buildings; Alterations**

Lessee shall have the right to construct buildings and other improvements on the Leased Land from time to time and to make additions to and alterations of any such buildings and improvements and any existing buildings and improvements. All work done in connection with such additions, alterations, improvements or construction shall be done promptly, and in good and workmanlike manner, and in compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and offices thereof. Lessee shall maintain or cause to be maintained, at all times when any work is in process in connection with such additions, alterations, improvements or construction, workmen's compensation insurance

covering all persons employed in connection with such work and with respect to whom death or bodily injury claims could be asserted against Lessor, Lessee or the Leased Property.

Lessee covenants and agrees at its expense to cause the acquisition of the Leased Land and the construction of apartment buildings and improvements located on the Leased Land (the "Buildings"), and in connection therewith, Lessee agrees to incur capital expenditures for the acquisition of the Leased Land and the construction and equipping of the Buildings in an aggregate amount of not less than [\$30,000,000]. It is understood and agreed that the Buildings, together with all other improvements or fixtures from time to time placed on the Leased Land, shall become the property of Lessor and part of the Leased Property, subject to the purchase option set forth in Article XV. The cost of the acquisition and renovation of the Buildings borne by Lessee shall be treated as additional rent payable by Lessee under this Lease. Lessee agrees to complete the construction and renovation of the Buildings prior to the third anniversary hereof, provided that such time period shall be extended in the event of an event of Force Majeure.

**ARTICLE XII.**  
Intentionally Omitted

**ARTICLE XIII.**  
Subletting, Assignments and Mortgaging

Section 13.01 Except for (i) leases in the ordinary course of business or otherwise desirable for operation of an apartment complex, (ii) a leasehold deed of trust pursuant to which Lessee mortgages its leasehold estate in the Leased Property, (iii) removal of the general partner of Lessee in accordance with the terms of its partnership agreement (the "Partnership Agreement") or by Lender pursuant to the loan documents related to the loan from Lender to the Lessee (the "Loan Documents") so long as any new general partner of Lessee is approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of the request or shall be deemed approved; provided, however, if the new general partner of Lessee is an affiliate of the Investor Limited Partner, approval of the Lessor shall not be required, and (iv) any other transfer of a partnership interest of Lessee in accordance with the terms of its Partnership Agreement or by the Lender pursuant to the Loan Documents so long as (A) DGA Shallowford SLP, LLC or an affiliate thereof remains a direct or indirect partner of Lessee or (B) the transferee is approved by lessor, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided within thirty (30) days of the date of request or shall be deemed approved (each of the foregoing being a "Permitted Transfer" which shall not require Lessor's consent), Lessee shall not have the right to sublet the Leased Property or assign or otherwise transfer its rights and interest hereunder except with the prior written consent of Lessor or as explicitly permitted in this Lease. In the event that the Lender becomes the successor lessee hereunder pursuant to this section, the Lender shall be eligible to make the payments in lieu of taxes pursuant to Section 7.04 hereof; and further provided that any successor or assign of the Lender, or any purchaser at a foreclosure sale other than the Lender, shall be entitled to make payments in lieu of taxes pursuant to Section 7.04 hereof so long as Lessor has reasonably approved such person or entity, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved. If such successor or assign of the Lender or any purchaser at a foreclosure sale other than the Lender is not approved by Lessor (the "Non-Approved Party") in accordance with the foregoing sentence, then the Non-Approved Party shall make payments in lieu of taxes beginning as of the date of such assignment or purchase equal to the ad valorem taxes that Lessee otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by Lessee. If Lessee conveys, assigns, transfers, leases, subleases or sells all or any part of its rights or interest hereunder to a transferee with the approval of HUD in accordance with section (c) of the

Lease Addendum attached hereto as Exhibit C but without the approval of Lessor, such transferee shall make payments in lieu of taxes beginning as of the date thereof equal to the ad valorem taxes that Lessee otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by Lessee, except as otherwise provided in this Section 13.01.

Section 13.02 If a mortgagee or Investor Limited Partner of Lessee shall have given Lessor, before any Event of Default shall have occurred hereunder, a written notice specifying the name and mailing address of the mortgagee or Investor Limited Partner, then Lessor shall not terminate this Lease by reason of the occurrence of any Event of Default hereunder unless Lessor shall have given the mortgagee and Investor Limited Partner a copy of its notice to Lessee of such Event of Default addressed to the mailing address last furnished by the mortgagee and Investor Limited Partner, and such Event of Default shall not have been cured by said mortgagee or Investor Limited Partner, as applicable, within the time permitted herein (which such time period, with respect to mortgagee and Investor Limited Partner, shall begin upon receipt of the respective notice by mortgagee and Investor Limited Partner), provided that mortgagee and Investor Limited Partner shall have the right to extend the period of time for the curing of any such Event of Default for an additional period of thirty (30) days from the date contained in the notice given pursuant to Section 16.03 herein, or in the case of an Event of Default which cannot be cured within said thirty (30) day period, for such additional period (not to exceed an additional sixty (60) days) as, with all due diligence and in good faith, is necessary to cure the Event of Default. Lessor acknowledges that it has received written notice that (a) Lender is a mortgagee hereunder, and that Lessor shall send notices required to be sent to a mortgagee hereunder to Lender at the address provided in Section 16.03 and (b) the Investor Limited Partner is an investor limited partner hereunder, and that Lessor shall send notices required to be sent to an investor limited partner hereunder to the Investor Limited Partner at the address provided in Section 16.03.

Section 13.03 Lessee irrevocably directs that Lessor accept, and Lessor agrees to accept, performance by any such mortgagee or Investor Limited Partner of the Lessee's, as applicable, right to terminate this Lease granted to Lessee by Article XV hereof, regardless whether an Event of Default has occurred. After the date hereof, and in addition to any rights the mortgagee or Investor Limited Partner may have by virtue of this Lease, if, within ninety (90) days after the mailing of a notice of termination, or such later date as may be provided in this Lease following the expiration of the cure period, if any, afforded to the Lessee (the "Mortgagee/Investor Cure Period"), such mortgagee or Investor Limited Partner shall pay, or arrange to the satisfaction of Lessor for the payment of, a sum of money equal to any and all Basic Rent, Additional Rents, and other payments due and payable by Lessee hereunder with respect to the portion of the Leased Property to which such mortgagee or Investor Limited Partner claims an interest as of the date of the giving of notice of termination, in addition to their pro rata share of any and all expenses, costs and fees, including reasonable attorneys' fees, incurred by Lessor in preparation for terminating this Lease, and in acquiring possession of the Leased Property, then, upon the written request of such mortgagee or Investor Limited Partner made any time prior to the expiration of the Mortgagee/Investor Cure Period, Lessor and the party making such request (or its nominee) (the "New Lessee") shall mutually execute prior to the end of such Mortgagee/Investor Cure Period a new Lease of the Leased Property (or such portion thereof as they have an interest in or mortgage on) for the remainder of the Term of this Lease and on the same terms and conditions, and with the same priority over any encumbrances created at any time by Lessor, its successors and assigns which Lessee has or had by virtue of this Lease; provided, however, that in addition to the above payments such New Lessee shall have paid to Lessor a sum of money equal to the Basic Rent and other payments for such portion of the Leased Property accruing from the date of such termination to the date of the commencement of the term of such new Lease, together with its pro rata share of all expenses, including reasonable attorneys' fees, incident to the preparation, printing, execution, delivery and recording of such new lease and provided, further, that such New Lessee is approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, and shall be provided or withheld within thirty (30) days of the date of request or shall be deemed approved. Such priority shall exist by virtue of the notice created by this Lease to any transferee of Lessor or person receiving an encumbrance from Lessor, and the priority

shall be self-operative and shall not require any future act by Lessor. Such new Leases shall contain the same clauses subject to which this demise is made, and shall be at the rents and other payments for such portion of the Leased Property due Lessor and upon the terms as are herein contained. New Lessees under any such new Leases shall have the same right, title and interest in and to and all obligations accruing thereafter under this Lease with respect to the applicable portion of the Leased Property as Lessee has under this Lease. Nothing in this Section 13.03 shall require the Investor Limited Partner or mortgagee, as a condition to the exercise of its rights under this Section 13.03, to cure any default of Lessee not reasonably susceptible of being cured by any investor limited partner or mortgagee.

Section 13.04 Lessee irrevocably directs that Lessor accept, and Lessor agrees to accept, performance by any such mortgagee or member of any term, covenant, agreement, provision, condition or limitation on Lessee's part to be performed or observed as though performed or observed by Lessee (including, without limitation, exercise of the option granted to Lessee by Section 15.01 hereof), irrespective of whether an Event of Default has occurred, provided such performance by said mortgagee or member shall occur within the time prescribed therefor in this Lease, plus an additional grace period of thirty (30) days thereafter or, if said Event of Default is curable but not within said 30-day period, then within such additional time as may be necessary to cure the same provided the mortgagee or member commences the curing thereof within such 30-day period and thereafter prosecutes the curing of such Event of Default to completion with all due diligence; provided, however, (i) with respect to any Event of Default hereunder which cannot be cured by said mortgagee or member until it obtains possession of the Leased Property, the provisions of Section 13.05 shall apply and (ii) if Lessee fails to maintain commercial public liability insurance required by Section 10.01 hereof, the mortgagee or member shall only have ten (10) days to cure such Event of Default.

Section 13.05 Nothing herein contained shall be deemed to impose any obligation on the part of Lessor to deliver physical possession of the Leased Property to such mortgagee or their respective nominee until the new leases have been executed by all pertinent parties. Lessor agrees, however, that Lessor will, at the cost and expense of such mortgagee or respective nominee, cooperate in the prosecution of judicial proceedings to evict the then defaulting Lessee or any other occupants of the Leased Property.

Section 13.06 Notwithstanding the term of any mortgage, Lessee's mortgagee shall have no further rights in the Lease except as stated herein. As used in this Section and throughout this Lease, the noun "mortgage" shall include a leasehold deed of trust, the verb "mortgage" shall include the creation of a leasehold deed of trust, the word "mortgagee" shall include the beneficiary under a leasehold deed of trust, and the terms "foreclose" or "foreclosure" shall include a trustee's sale under a deed of trust as well as a foreclosure by judicial process.

#### **ARTICLE XIV.**

##### **Events of Default; Termination**

If any one or more of the following events (herein called "Events of Default") shall happen:

(a) if Lessee fails to maintain the commercial general liability insurance required by Section 10.01 after being given notice of such failure and not curing such failure within ten (10) days of receipt of such notice; or

(b) if default shall be made in the due and punctual payment of any payment due pursuant to Section 7.04 hereof, and such default shall continue for more than thirty (30) days after Lessee's receipt of written notice of such default to Lessee from Lessor; or

(c) if default shall be made by Lessee in the due performance of or compliance with any of the terms hereof, other than that referred to in the foregoing subdivisions (a) and (b), and such default shall continue for sixty (60) days after Lessor shall have given Lessee written notice of such default (or in the case of any such default which cannot with due diligence be cured within such 60-day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any such default not susceptible of being cured with due diligence within the sixty (60) days that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence);

then in any such event Lessor at any time thereafter and while such Event of Default shall continue may give a written termination notice to Lessee, which notice shall specify the nature of the Event of Default and a date of termination of this Lease not less than ninety (90) days after the giving of such notice. Upon such termination, Lessor shall have the right, but not the obligation, to enter upon the Leased Property and repossess the Leased Property. This termination right is subject to Lessee's option pursuant to Section 15.01 and at any time during the Term or within 180 days after the Term of this Lease, Lessee may exercise its option in Section 15.01 without regard to whether an Event of Default has occurred.

## **ARTICLE XV.**

### **Purchases and Purchase Prices**

**Section 15.01 Option to Purchase.** Lessee (and upon an event of default under any mortgage, such mortgagee) shall have an irrevocable and exclusive option to purchase the Leased Property as a whole or any part thereof at any time during the Term or within one hundred eighty (180) days after the termination or expiration of the Lease for the amount provided in Section 15.03. To exercise such option Lessee shall (i) give Lessor at least ten (10) days' prior written notice of its intent to exercise any option granted pursuant to this Section 15.01, which notice shall state the date of such purchase, termination and acquisition, and (ii) comply with the provisions of Section 15.03 hereof. The option to be exercised by Lessee hereunder may be exercised whether or not a default or Event of Default has occurred hereunder.

**Section 15.02 Granting of Easements.** From time to time during the Term, Lessee shall have the right, at Lessee's expense, to cause Lessor (i) to grant easements affecting the Leased Land, (ii) to dedicate or convey, as required, portions of the Leased Land for road, highway and utilities and other public purposes, and (iii) to execute petitions to have the Leased Land or portions thereof annexed to any municipality or included within any utility, highway or other improvement or service district. Lessor shall also promptly execute and deliver estoppels, joinders, non-disturbance agreements and other documents required in connection with Lessee's use, financing, and refinancing of the Leased Property.

### **Section 15.03 Exercise of Option.**

(a) To exercise any option contained in Section 15.01, Lessee shall pay, or cause to be paid, on or prior to the date of purchase and/or termination and acquisition, as the purchase price the sum of (i) \$1.00 plus (ii) any other amounts that are then due or that have accrued under Article VII of this Lease.

(b) On the purchase date for the purchase of the Leased Property pursuant to Section 15.01, Lessor shall convey Lessor's interest in the Leased Property to Lessee (or its assigns) by quitclaim deed, without warranty of any type. The form of the quitclaim deed pursuant to which property will be conveyed pursuant to this Section shall be in substantially the form attached hereto as Exhibit B. Lessee shall pay all expenses relating to such conveyance. To the extent Lessee or mortgagee exercises its option to purchase all of the Leased Property, then this Lease shall terminate upon conveyance of the Leased Property to Lessee or mortgagee.

**ARTICLE XVI.**  
Miscellaneous

Section 16.01 Applicable Law. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee.

Section 16.02 Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 16.03 Notices and Demands. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Lease shall be in writing, and shall be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by a nationally recognized overnight courier service, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the Lessor:

The Health, Educational and Housing Facility Board  
of the City of Chattanooga, Tennessee  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, Tennessee 37402  
Attention: Chairman

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

To the Lessee:

DGA Shallowford LP  
6405 Kingston Pike  
Knoxville, Tennessee 37919  
Attn: Craig Cobb

With a copy to:

Bass, Berry & Sims PLC  
900 S. Gay St., Suite 1700  
Knoxville, Tennessee 37902  
Attention: Russell E. Stair

To the Investor  
(as a member of Lessee as provided in Article XIII):

[Pinnacle Bank  
Pinnacle Community Development SLP, Inc.  
949 Shady Grove S., Suite 200  
Memphis, Tennessee 38120  
Attention: Stacy Fantom]

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Section 16.04 Headings and References. The headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof. All references in this Lease to particular Articles or Sections are references to Articles or Sections of this Lease, unless otherwise indicated.

Section 16.05 Successors and Assigns. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 16.06 Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 16.07 Expenses. Lessee shall pay all costs and expenses of Lessor in connection with the negotiation and execution of this Lease and the performance hereof, including the reasonable fees and expenses of Lessor's attorneys. In addition, in the event that Lessor shall be required to engage legal counsel for the enforcement of any of the terms of this Lease, whether or not such employment shall require institution of suit or other legal services required to secure compliance on the part of Lessee, Lessee shall be responsible for and shall promptly pay to Lessor the reasonable value of said attorneys' fees, and any other reasonable expenses incurred by Lessor as a result of such default.

Section 16.08 No Liability of Officers, Etc. No recourse under or upon any obligation, covenants or agreement contained in this Lease shall be had against any incorporator, members, director or officer, as such, past, present or future, of Lessor, either directly or through the Lessor. 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 is hereby expressly waived and released by Lessee as a condition of and consideration for the execution of this Lease.

Section 16.09 No Liability of City, County, Officers, Etc. The City, County and the officers and agents of the City and County shall not in any event be liable for the performance of any obligation or agreement of any kind whatsoever herein, and none of the agreements or obligations of Lessor contained in this Lease or otherwise shall be construed to constitute an indebtedness of the City, County or the officers or agents of the City or County, within the meaning of any constitutional or statutory provision whatsoever.

Section 16.10 Limitation of Liability. Notwithstanding any other provision hereof, Lessor's liability hereunder shall be limited to its interest in the Leased Property and the payments to be made pursuant to this Lease, and Lessee shall not have any recourse against any other assets of Lessor.

Section 16.11 Interest. In addition to all other amounts payable under this Lease, Lessee shall also pay interest on any payment due hereunder that is not paid on the date such payment is due until paid

at the interest rate, as it may vary from time to time, that the City would impose on a delinquent tax payment during the period such payment was due.

Section 16.12 Amendments and Modifications. The Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings whether written or oral. Any amendments, modifications or revisions to this Lease shall be signed by both Lessor and Lessee and only with the prior written consent of Investor Limited Partner.

Section 16.13 HUD Lease Addendum. The Lease Addendum attached hereto as Exhibit C is incorporated herein and, in the event of a conflict between the terms of the Lease Addendum and this Lease, the Lease Addendum shall control.

[Signatures appear on following page.]



IN WITNESS WHEREOF, this Lease has been duly executed by the parties hereto as of the date and year first above written.

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

ATTEST:

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

\_\_\_\_\_  
Secretary

DGA SHALLOWFORD LP,  
a Tennessee limited partnership

By: Shallowford GP Corporation,  
a Tennessee nonprofit corporation, its general partner

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

EXHIBIT A

Legal Description of Leased Land

LEGAL DESCRIPTION

(Shallowford Pointe)

EXHIBIT B

This Instrument Prepared By:  
Russell E. Stair, Attorney  
BASS, BERRY & SIMS PLC  
1700 Riverview Tower  
900 South Gay Street  
Knoxville, Tennessee 37902

QUITCLAIM DEED

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between:

THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, a Tennessee public nonprofit corporation.

First Party, and

DGA SHALLOWFORD LP, a Tennessee limited partnership.

Second Party,

WITNESSETH: that said First Party, for and in consideration of the sum of ONE DOLLAR (\$1.00) cash and other good and valuable considerations in hand paid by Second Party, the receipt and sufficiency of which is hereby acknowledged, has quitclaimed and does hereby quitclaim unto the said Second Party the following described premises:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A AND MADE A PART HEREOF.

THIS CONVEYANCE is made subject to applicable easements, restrictions and building set back lines of record.

TOGETHER with all the estate, right, title and interest of the First Party therein, with the hereditaments and appurtenances thereto appertaining releasing all claims therein.

In this instrument in every case the plural shall include the singular and vice-versa and each gender the others.

IN WITNESS WHEREOF, this instrument has been executed on behalf of First Party by its duly authorized officer on the day and year first above written.

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

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



EXHIBIT C

**HUD LEASE ADDENDUM**

**Lease Addendum -  
Multifamily**

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

OMB Approval No. 2502-  
0598 (Exp. 9/30/2021)

**Public Reporting Burden** for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

**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; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Project Name: Shallowford Pointe  
HUD Project No: \_\_\_\_\_

**THIS LEASE ADDENDUM** is attached to and made part of that certain Lease dated as of \_\_\_\_\_, 2023 (the "**Lease**") between **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE** ("**Landlord**") and **DGA SHALLOWFORD LP** ("**Tenant**") (collectively, the "**Parties**").

The Lease Addendum is required in connection with a mortgage loan insured by the U.S. Department of Housing and Urban Development ("**HUD**") for multifamily projects pursuant to the National Housing Act, as amended, found at 12 U.S.C. § 1701, *et seq.* ("**Act**"), and made by the following HUD-approved lender, Walker & Dunlop, LLC, a Delaware limited liability company ("**Lender**"). The insured loan is secured by a Security Instrument on the leasehold estate set forth in the Lease.

The definition of any capitalized term or word used in this Lease Addendum and not otherwise defined can be found in the Security Instrument and/or Note between Lender and Tenant; or the Regulatory Agreement between Tenant and HUD. The terms "**HUD**" and "**Lender**" as used in the Lease Addendum shall also include their successors and assigns, and the Tenant is the same legal entity as the Borrower under the Security Instrument. All references to "**days**" in this Lease Addendum shall mean calendar days.

Notwithstanding anything else in the Lease to which this Lease Addendum 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 the Tenant described in the Security Instrument, and to induce HUD to insure said Loan, so long as this leasehold estate 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, Landlord and Tenant acknowledge and agree to the following provisions.

The leasehold estate consists of the legally described land and includes all buildings, improvements, alterations, and fixtures now or in the future located on the legally described land. The Tenant does not own title to any of the buildings, improvements, alterations or fixtures but Tenant is the owner of the buildings, improvements, alterations and fixtures for federal income and state franchise and excise tax purposes. As such, the term “**Property**” means the legally described land in the Lease including the buildings, improvements, alterations and fixtures now or in the future located on the land.

**1. Compliance with HUD Requirements.** Pursuant to the Act, the following provisions may not be waived under any circumstances, whether for a new lease or an existing lease:

- (a) the term of the Lease and other Lease provisions comply with the section of the Act and related federal regulations under which the Note is endorsed for mortgage insurance;
- (b) the Landlord owns the Property in fee simple, and the leasehold estate is directly by the Landlord to the Tenant;
- (c) the leasehold estate underlying the Lease constitutes a mortgageable real property interest under state law;
- (d) the Lease and related Lease documents do not conflict with any Program Obligations<sup>1</sup> promulgated by HUD with respect to such mortgage insurance; and
- (e) all ground rent amounts have prior written approval by HUD.

**2. Modifications.** The Lease and this Lease Addendum shall not be modified without the written consent of HUD and Lender. Modifications of the Lease and this Lease Addendum that are not authorized in writing by HUD and Lender are void and unenforceable.

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<sup>1</sup> “Program Obligations” means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Lease Addendum rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on “HUDCLIPS,” at [www.hud.gov](http://www.hud.gov).

**3. Conflict Provision.** The provisions of this Lease Addendum benefit Lender and HUD and are specifically declared to be enforceable against the parties to the 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 the Lease, the provisions of this Lease Addendum shall prevail and control.

**4. Recording.** The full Lease agreement and incorporated HUD Lease Addendum, or a memorandum of lease (if permitted under state law), must be recorded in the applicable land records office. If a memorandum of lease or a short form lease is to be recorded, it must set forth the following information, in addition to compliance with state law requirements:

- (a) names of the Parties;
- (b) legal description;
- (c) term and renewals;
- (d) reference to the HUD Lease Addendum; and
- (e) specific reference to HUD's option to purchase in Section 7 (unless Section 7 is expressly waived in writing by HUD in accordance with Program Obligations).

**5. Estoppel Certificate.** As a condition of HUD's acceptance of a lease transaction, an estoppel certificate identifying the Lease documents and signed by the Landlord, dated within thirty (30) days of the Note endorsement, must be provided to Lender and HUD at closing. The Landlord must confirm in writing to Lender and HUD that the Security Instrument is authorized, the Lease is in full force and effect, there are no defaults or pending defaults under the Lease or conditions that would give rise to defaults given the passage of time, and that the description of the Property is correct. The document must provide the language required by 24 CFR Section 200.62, and also include the "Warning" language found at the beginning of this Lease Addendum.

Upon a reasonable request from Tenant, Lender, or HUD, Landlord further agrees to promptly provide from time to time an estoppel certificate to confirm the terms of, and no default under, the Lease.

**6. Consent for Mortgage.** Landlord agrees that the Tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by the Security Instrument on this leasehold estate. 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.

**7. Intentionally deleted.**

**8. Conveyance by Tenant.** If approved in writing by HUD in advance, the Tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold

interest in the Property without the need for approval or consent by any other person or entity.

**9. Insurance.**

- (a) 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.
- (b) 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.

**10. Condemnation.** All awards and/or proceeds from a 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.

**11. Intentionally deleted.**

**12. Intentionally deleted.**

**13. Landlord Cooperation for Needed Authorizations.** The Landlord agrees that within ten (10) business 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 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 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.

**14. Taxes.** Nothing in this 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 Lease.

**15. Notices.** All notices, demands and requests which are required to be given by the Landlord, Tenant, Lender or HUD in connection with the Lease and this Lease Addendum 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 shall be addressed as follows:

If to Lender:

Walker & Dunlop, LLC  
7272 Wisconsin Avenue, Suite 1300  
Bethesda, MD 20814  
Attention: Loan Servicing

with copies to:

[Jonathan H. Peyton  
Tiber Hudson LLC  
2042 Town Center Blvd. #121  
Knoxville, TN 37922]

If to HUD:

US Dept. of Housing and Urban Dev.  
701 Broadway, Suite 130  
Nashville, TN 37203

If to Tenant:

DGA Shallowford LP  
6305 Kingston Pike  
Knoxville, Tennessee 37919  
Attention: Craig Cobb

with copies to:

Bass, Berry & Sims PLC  
900 South Gay Street, Suite 1700  
Knoxville, Tennessee 37902  
Attention: Russell E. Stair

[Pinnacle Bank  
Pinnacle Community Development SLP, Inc.  
949 Shady Grove S., Suite 200  
Memphis, Tennessee 38120  
Attention: Stacy Fantom]

If to Landlord:

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

100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, Tennessee 37420  
Attention: Chairman

with copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**16. No Merger.** There shall be no merger of this Lease or the leasehold estate created by this Lease with the fee estate in or ownership of the Property or any interest therein by reason of the fact that the same person or entity may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest therein and fee estate in or ownership of the Property. No such merger shall occur unless and until HUD specifically consents and agrees in writing to such merger.

Each signatory below hereby certifies that each of their statements and representations contained in the Lease and this Lease Addendum and all their supporting documentation thereto are true, accurate, and complete. This Lease Addendum 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.

36714173.2

**AGREEMENT FOR PAYMENTS IN LIEU  
OF AD VALOREM TAXES FOR LOW-INCOME  
HOUSING TAX CREDIT (LIHTC) PROJECT**

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the “Board”); DGA SHALLOWFORD LP, a Tennessee limited partnership (the “Company”); and the CITY OF CHATTANOOGA, TENNESSEE (the “City”).

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

**WHEREAS**, the Company is contemplating to cause the construction and operation of an affordable housing project for low- and moderate-income persons to be financed in part through Low Income Housing Tax Credits (“LIHTC”) known as Shallowford Pointe located in the City of Chattanooga, Tennessee (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 Hamilton County, Tennessee (the “County”) will be derived from the Project; and

**WHEREAS**, pursuant to Tenn. Code Ann. 48-101-312, the Board is authorized to negotiate and receive from any lessee of the Board, without any delegation from the City or the County, payments in lieu of taxes with respect to a LIHTC project, provided that the chief executive officer of the City has executed a letter supporting the project; and

**WHEREAS**, as evidenced by the letter dated December 18, 2023, attached hereto as Exhibit “B”, the mayor of the City has executed a letter supporting the Project (the “Support Letter”), and the Support Letter has further been joined by the mayor of the County; and

**WHEREAS**, the Board has agreed to take title to certain real 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, subject to City Council Resolution No. 28783 delegating certain authority to the Health, Educational and Housing Facilities Board to negotiate and accept PILOT payments from lessees subject to certain conditions; and

**WHEREAS**, because the Property is to be owned by the Board during the term of this PILOT agreement, which is a public corporation organized under the provisions of Tennessee Code Annotated, §48-101-301, et seq., and the Project will also receive Low Income Housing Tax Credits, 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.

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

1. Appraisal and Assessment of Property. The Parties agree that the Property will continue to be appraised and assessed in accordance with the Constitution and laws of the State of Tennessee as though the Property were subject to property taxes and that written notice of any changes in appraisals of the Property shall be provided to the Board and the Company in the same manner that notices are given to owners of taxable property. The Board and the Company shall be entitled to all records relating to the appraisal and assessment of the Property.

2. Computation and Billing of Payments In Lieu of Taxes. The Board and/or the City

will request for the Hamilton County Trustee (the "Trustee") to serve as agent of the Board to compute the amounts of the In Lieu Payments (to the extent such payments are not fixed), to receive such payments from the Company, except as referenced in Section 3 below and to disburse such payments to the County as set forth in Section 3. The City and/or the Board shall request that: (i) on or about October 1 of each year during the term of this agreement, the Trustee 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 Hamilton County Assessor of Property (the "Assessor"); and (ii) each year hereunder, the Trustee 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 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) Property Exclusive of Improvements. For the period shown on Exhibit B (the "Real Property Tax Abatement Period"), the Company shall make In Lieu Payments with respect to the Property in the amounts shown on Exhibit B attached hereto. The intent is for the City and County to receive during the construction and lease-up stage of the Project all taxes assessed as to the value of the property in the current tax year. Thereafter, the City will continue to receive the same such amount, and the County shall receive the fixed payments shown on Exhibit B, which are intended to approximate the Hamilton County Schools portion of the property taxes. The period shown on Exhibit B is called the "Tax Abatement Period". 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 or the City 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 may 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. 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 a meeting with the City to determine whether such default has been cured, and the Company and the City shall meet promptly thereafter attempt in good faith to resolve such dispute. The Company may, in addition, file

suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

(c) The Company covenants as follows:

(i) The Project will be completed within thirty-six (36) months following the date of this Agreement, subject to any delay caused by a force majeure event.

(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.

(d) 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 specifying such failure in reasonable detail (an "Affordability Event of Default"), the City may then require the Company to pay an amount determined by multiplying the taxes that would otherwise have been payable with respect to the Property if the Property were owned by the Company during the period of the continuance of such Affordability Event of Default by a fraction (expressed as a percentage), the denominator of which is the number of dwelling units at the Project subject to the 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 City shall look solely to the Company for these payment obligations. 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 owned by the Company and 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. It is the intention of the Parties that all sums received by the Trustee pursuant to Section 4 for the benefit of the County general fund will 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. It is the intention of the Parties that all such sums received by the Trustee will 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 amount required to be paid to the City by Section 4, and the account for the use and benefit of the County shall be funded with the amount required to be paid to the County by Section 4. It is the intention of the Parties that all sums received by the Trustee pursuant to Section 4 will 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 shall negotiate in good faith with the Assessor or the Trustee, as the case may be, to resolve any disputes as to appraisal, assessment or computation. If the Company and the Assessor or the Trustee are unable to resolve a dispute, then the Company may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment and computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

8. Annual Report. The Company will provide, on or before 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). An independent audit of these certifications may occur if requested by the City or County during any calendar year of this Agreement. All PILOT agreements shall be subject to an annual review and report of status to the City Council and County Commission.

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 Company, c/o DGA Shallowford LP, 6305 Kingston Pike, Knoxville, TN 37919, Attn: Craig Cobb, with a copy to Bass, Berry & Sims PLC, 900 S. Gay Street, Suite 1700, Knoxville, TN 37902, Attn: Russell E. Stair; 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. 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 and the Board. The Mayor of the City 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 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 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 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 and/or the Board. In the event that the Mayor of the City 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 and the Board to request approval of such assignment pursuant to the terms of this Section, which consents shall not be unreasonably withheld. Upon satisfaction of the requirements of this Section, the assignment shall relieve the Company from liability for any of its obligations hereunder as of the effective date of

the assignment.

16. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court or jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions of this Agreement.

17. No Liability of Board's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, of the Board, whether past, present or future, either directly or through the Board. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and signatories hereto and to their respective successors and assigns.

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

20. Amendments. This Agreement may be amended only in writing, signed by each of the parties hereto, except that the Trustee and the Assessor shall not be required to join in amendments unless such amendments affect their respective duties hereunder.

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

*[Signature Page Follows]*

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

ATTEST:

By: \_\_\_\_\_  
Richard Johnson, Secretary

By: \_\_\_\_\_  
Hicks Armor, Chairman

DGA SHALLOWFORD LP

By: Shallowford GP Corporation, a Tennessee  
Non-Profit Corporation, its general partner

By: \_\_\_\_\_  
Elizabeth F. McCright, President

CITY OF CHATTANOOGA, TENNESSEE

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

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

(Shallowford Pointe)

A certain tract or parcel of land in HAMILTON County, State of Tennessee, described as follows, to-wit:

IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE:

BEGINNING at the Northwest corner of Lot Twenty-five (25), Edgmon Forest Subdivision, as shown by plat of record in Plat Book 27, Page 123, in the Register's Office of Hamilton County, Tennessee; thence North Twenty-three (23) degrees Thirty (30) minutes East Seven Hundred Nine and 51/100 (709.51) feet to a point in the Southern right of way line of Shallowford Road; thence along the Southern right of way line of Shallowford Road South Forty-five (45) degrees Seventeen (17) minutes Forty-five (45) seconds East, Four Hundred Ten and 82/100 (410.82) feet to a point being the Northernmost corner of Lot Three (3), Haven's Addition to Edgmon Forest, as shown by plat of record in Plat Book 41, Page 62, in the Register's Office of Hamilton County, Tennessee; thence South Twenty-three (23) degrees Thirty (30) minutes Ten (10) seconds West, and along the Western line of said Lot Three (3), Haven's Addition to Edgmon Forest, Five Hundred Sixty and 93/100 (560.93) feet to a point being the Northeastern corner of Lot Twenty-six (26), Edgmon Forest, as shown by plat of record in Plat Book 27, Page 123, in the Register's Office of Hamilton County, Tennessee; thence along the Northern line of Lots Twenty-six (26) and Twenty-five (25), Edgmon Forest, as shown by Plat Book 27, Page 123, in the Register's Office Hamilton County, Tennessee; thence North Sixty-six (66) degrees, Thirty (30) minutes West, Three Hundred Eighty-two and 96/100 (382.96) feet to the point of beginning, as shown by a survey by Carlos E. Niles, dated October 10, 1989.

LESS AND EXCEPT that part conveyed by Warranty Deed recorded in Book 7719, Page 635, in the Register's Office of Hamilton County, Tennessee.

LESS AND EXCEPT any of the above-described lands lying within the bounds of Shallowford Road.

Being the same property conveyed to Shallow Valley, LLC, a Tennessee limited liability company, by Warranty Deed from Chung Yuen Liu, Trustee Under Revocable Trust Agreement of Chung Yuen Liu, dated September 15, 2010, as to an undivided one-half (1/2) interest, and Ruth Wang Liu, Trustee Under Revocable Trust Agreement of Ruth Wang Liu, dated September 15, 2010, as to an undivided one-half (1/2) interest, dated December 12, 2018 and recorded in Book GI 11522, page 548, in the Hamilton County Register's Office.

**EXHIBIT “B”**  
**TO AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES**

(Shallowford Pointe)

Construction/Lease-Up Period\*: \$8,364.16 per year (\$4,285.00 to the City and \$4,079.16 to the County)

Year 1 through Year 5: \$35,000 per year

Year 6 through Year 10: \$40,000 per year

Year 11 through Year 15: \$45,000 per year

Year 16 through Year 20: \$50,000 per year

\*Year 1 shall commence at the point of stabilization (defined as 80% occupied or above) or no more than 36 months from the start of construction, whichever comes first.

36782215.2

**AGREEMENT FOR PAYMENTS IN LIEU  
OF AD VALOREM TAXES FOR LOW-INCOME  
HOUSING TAX CREDIT (LIHTC) PROJECTS**

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the “Board”); DGA SHALLOWFORD LP, a Tennessee limited partnership (the “Company”); and the CITY OF CHATTANOOGA, TENNESSEE (the “City”). ~~HAMILTON COUNTY, TENNESSEE (the “County”) is provided notice of this Agreement for Payment in Lieu of Tax (PILOT) payments pursuant to Tenn. Code Ann. 48-101-312 to WESTON WAMP and his successors, acting in the capacity of COUNTY MAYOR, WILLIAM F. HULLANDER and his successors, acting in the capacity of HAMILTON COUNTY TRUSTEE (“Trustee”), and by MARTY HAYNES and his successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY (“Assessor”).~~

**WITNESSETH:**

WHEREAS, the Company is contemplating to cause the construction and operation of a ~~federal funded~~an affordable housing (~~LIHT~~) project for low- and moderate-income persons to be financed in part through Low Income Housing Tax Credits (“LIHTC”) known as Shallowford Pointe located in the City of Chattanooga, Tennessee (~~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 Hamilton County, Tennessee (the “County”) will be derived from the Project; and

WHEREAS, pursuant to Tenn. Code Ann. 48-101-312, the Board is authorized to negotiate and receive from any lessee of the Board, without any delegation from the City or the County, payments in lieu of taxes with respect to a LIHTC project, provided that the chief



executive officer of the City has executed a letter supporting the project; and

WHEREAS, as evidenced by the letter dated December 18, 2023, attached hereto as Exhibit “B”, the mayor of the City has executed a letter supporting the Project (the “Support Letter”), and the Support Letter has further been joined by the mayor of the County; and

WHEREAS, the Board has agreed to take title to certain real 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 ~~as supported by the City Mayor and County Mayor letter dated December 18, 2023 described in Exhibit “B” which is attached hereto, and~~ subject to City Council Resolution No. 28783 delegating certain authority to the Health, Educational and Housing Facilities Board to negotiate and accept PILOT payments from lessees subject to certain conditions; and

WHEREAS, because the Property is to be owned by the Board during the term of this PILOT agreement, which is a public corporation organized under the provisions of Tennessee Code Annotated, §48-101-301, et seq., and ~~is~~ the Project will also ~~subject to LIHTC~~ receive Low Income Housing Tax Credits, all such property will be exempt from ad valorem property taxes (“property taxes”) normally paid to the City and to the County, so long as the Property is owned by the Board, pursuant to the provisions of Tennessee Code Annotated, §48-101-312; and

WHEREAS, for the public benefit of the citizens of the City and the County, the Board has requested that the Company make certain payments to the Board in lieu of the payment of property taxes that would otherwise be payable on the Property; and

WHEREAS, the Company has agreed to make such payments to the Board in lieu of the property taxes otherwise payable on the Property (the “In Lieu Payments”), as more particularly set forth hereinafter; ~~and~~.

~~WHEREAS, the Board has been authorized to receive the In Lieu Payments in lieu of property taxes by resolutions adopted by the City and the County, acting through their duly elected Council and Commission, respectively, which resolutions delegate to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions; and~~

~~WHEREAS, the 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 agents 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~~ 1. a Appraisal and assess the Assessment of Property. The ~~Assessor shall appraise and assess~~ Parties agree that the Property will continue to be appraised and assessed in accordance with the Constitution and laws of the State of Tennessee as though the Property were subject to property taxes. ~~The Assessor shall give the Trustee, the City Treasurer, the Board, and the Company~~ and that written notice of any changes in appraisals of the Property shall be provided to the Board and the Company in the same manner that notices are given to owners of taxable property. The ~~Assessor shall make available to the~~ Board and the Company shall be entitled to 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~~ and/or the City will request for the Hamilton County Trustee ~~as~~  
~~its~~ (the "Trustee") to serve as agent of the Board to compute the amounts of the In Lieu Payments (to the extent such payments are not fixed), to receive such payments from the Company, except as referenced in Section 3 below and to disburse such payments to the County as set forth in Section 3. ~~On~~ The City and/or the Board shall request that: (i) 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 Hamilton County Assessor: of Property (the "Assessor"); and (ii) Eeach 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) Property Exclusive of Improvements. For the period shown on Exhibit B (the "Real Property Tax Abatement Period"), the Company shall make In Lieu Payments with respect to the Property in the amounts shown on Exhibit B attached hereto. The intent is for the City and County to receive during the construction and lease-up stage of the Project all taxes assessed as to the value of the property in the current tax year. Thereafter, the City will continue to receive the same such amount, and the County shall receive the fixed payments shown on

Exhibit B, which are intended to approximate the Hamilton County Schools portion of the property taxes. The period shown on Exhibit B is called the "Tax Abatement Period". 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; or 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,~~may 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 a meeting with~~ the City ~~and County, as applicable, each meet~~ to determine whether such default has been cured, and the Company and the City ~~or the County, as the case may be,~~ shall meet promptly thereafter attempt in good faith to resolve such dispute. The Company may, in addition, file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

(c) The Company covenants as follows:

(i) The Project will be completed within thirty-six (36) months following the date of this Agreement, subject to any delay caused by a force majeure event.

(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.

(d) 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 amount determined by multiplying the taxes that would otherwise have been payable with respect to the Property if the Property were owned by the Company during the period of the continuance of such Affordability Event of Default by a fraction (expressed as a percentage), the denominator of which is the number of dwelling units at the Project subject to the 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 these payment obligations. 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 owned by the Company and 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~~ It is the intention of the Parties that all sums received by the Trustee pursuant to Section 4 for the benefit of the County general fund ~~shall~~ will 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~~ It is the intention of the Parties that all such sums received by the Trustee ~~shall~~ will 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 amount required to be paid to

the City by Section 4, and the account for the use and benefit of the County shall be funded with the amount required to be paid to the County by Section 4. ~~All~~ It is the intention of the Parties that all sums received by the Trustee pursuant to Section 4 ~~shall~~ will 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~~ shall negotiate in good faith with the Assessor or the Trustee, as the case may be, ~~shall negotiate in good faith~~ to resolve any disputes as to appraisal, assessment or computation. If the Company and the Assessor or the Trustee are unable to resolve a dispute, then the Company may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment and computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

8. Annual Report. The Company will provide, on or before 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). An independent audit of these certifications may occur if requested by the City or County during any calendar year of this Agreement. All PILOT agreements shall be subject to an annual review and report of status to the City Council and County Commission.

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.

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~~Attorney, Hamilton County Government, Room 204, County Courthouse, Chattanooga, Tennessee 37402-1956~~; if to the Company, c/o DGA Shallowford LP, 6305 Kingston Pike, Knoxville, TN 37919, Attn: Craig Cobb, with a copy to Bass, Berry & Sims PLC, 900 S. Gay Street, Suite 1700, Knoxville, TN 37902, Attn: Russell E. Stair; ~~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. 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.

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.

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

*[Signature Page Follows]*

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

ATTEST:

By: \_\_\_\_\_  
Richard Johnson, Secretary

By: \_\_\_\_\_  
Hicks Armor, Chairman

DGA SHALLOWFORD LP

By: Shallowford GP Corporation, a Tennessee  
Non-Profit Corporation, its general partner

By: Elizabeth F. McCright, President

CITY OF CHATTANOOGA, TENNESSEE

By: \_\_\_ Mayor

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

(Shallowford Pointe)

A certain tract or parcel of land in HAMILTON County, State of Tennessee, described as follows, to-wit:

IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE:

BEGINNING at the Northwest corner of Lot Twenty-five (25), Edgmon Forest Subdivision, as shown by plat of record in Plat Book 27, Page 123, in the Register's Office of Hamilton County, Tennessee; thence North Twenty-three (23) degrees Thirty (30) minutes East Seven Hundred Nine and 51/100 (709.51) feet to a point in the Southern right of way line of Shallowford Road; thence along the Southern right of way line of Shallowford Road South Forty-five (45) degrees Seventeen (17) minutes Forty-five (45) seconds East, Four Hundred Ten and 82/100 (410.82) feet to a point being the Northernmost corner of Lot Three (3), Haven's Addition to Edgmon Forest, as shown by plat of record in Plat Book 41, Page 62, in the Register's Office of Hamilton County, Tennessee; thence South Twenty-three (23) degrees Thirty (30) minutes Ten (10) seconds West, and along the Western line of said Lot Three (3), Haven's Addition to Edgmon Forest, Five Hundred Sixty and 93/100 (560.93) feet to a point being the Northeastern corner of Lot Twenty-six (26), Edgmon Forest, as shown by plat of record in Plat Book 27, Page 123, in the Register's Office of Hamilton County, Tennessee; thence along the Northern line of Lots Twenty-six (26) and Twenty-five (25), Edgmon Forest, as shown by Plat Book 27, Page 123, in the Register's Office Hamilton County, Tennessee; thence North Sixty-six (66) degrees, Thirty (30) minutes West, Three Hundred Eighty-two and 96/100 (382.96) feet to the point of beginning, as shown by a survey by Carlos E. Niles, dated October 10, 1989.

LESS AND EXCEPT that part conveyed by Warranty Deed recorded in Book 7719, Page 635, in the Register's Office of Hamilton County, Tennessee.

LESS AND EXCEPT any of the above-described lands lying within the bounds of Shallowford Road.

Being the same property conveyed to Shallow Valley, LLC, a Tennessee limited liability company, by Warranty Deed from Chung Yuen Liu, Trustee Under Revocable Trust Agreement of Chung Yuen Liu, dated September 15, 2010, as to an undivided one-half (1/2) interest, and Ruth Wang Liu, Trustee Under Revocable Trust Agreement of Ruth Wang Liu, dated September 15, 2010, as to an undivided one-half (1/2) interest, dated December 12, 2018 and recorded in Book GI 11522, page 548, in the Hamilton County Register's Office.

**EXHIBIT “B”**  
**TO AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES**

(Shallowford Pointe)

Construction/Lease-Up Period\*: \$8,364.16 per year (\$4,285.00 to the City and \$4,079.16 to the County)

Year 1 through Year 5: \$35,000 per year

Year 6 through Year 10: \$40,000 per year

Year 11 through Year 15: \$45,000 per year

Year 16 through Year 20: \$50,000 per year

\*Year 1 shall commence at the point of stabilization (defined as 80% occupied or above) or no more than 36 months from the start of construction, whichever comes first.

36782215.2

<b>Summary report:</b>	
<b>Litera Compare for Word 11.2.0.54 Document comparison done on 2/7/2024 8:45:22 AM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> 2024.01.25 PILOT Agreement DGA PAN rev.docx	
<b>Modified filename:</b> DGA Shallowford 23 - Chattanooga HEB PILOT Lease(BBS Revisions 2.6.24).docx	
<b>Changes:</b>	
<u>Add</u>	40
<del>Delete</del>	63
<del>Move From</del>	2
<u>Move To</u>	2
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>107</b>

## PRELIMINARY BOND RESOLUTION

A RESOLUTION OF THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE RELATING TO THE ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS FOR AN AMOUNT NOT EXCEEDING THIRTY-FIVE MILLION DOLLARS (\$35,000,000.00) TO PROVIDE FINANCING TO ONE WESTSIDE PHASE 1B, LP FOR THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF AN APPROXIMATELY 166-UNIT HOUSING FACILITY FOR LOW AND MODERATE-INCOME CITIZENS TO BE LOCATED AT 501 WEST 12TH STREET, CHATTANOOGA, TENNESSEE.

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WHEREAS, One Westside Phase 1B, LP or an affiliate thereof (the "Applicant"), is considering the acquisition, construction and equipping of an approximately 166-unit housing facility for low and moderate-income citizens to be located at 501 West 12th Street, Chattanooga, Tennessee, and wishes to have The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (the "Board") indicate its willingness to issue revenue bonds to provide financing for such purposes; and

WHEREAS, the acquisition, construction and equipping of such facilities will constitute a "project" within the meaning of T.C.A. § 48-101-301; and

WHEREAS, a letter of intent has been presented to the Board under the terms of which the Board agrees, subject to the provisions of such letter, to issue its revenue bonds in an amount not exceeding \$35,000,000 to provide financing for such project.

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

1. The Board hereby finds that the financing of such above-described project will improve the quality and availability of housing in the City of Chattanooga, Tennessee, and will contribute to the general welfare of the citizens of the City.

2. The Chairman or the Vice Chairman of the Board is hereby authorized to execute a letter of intent with the Applicant in substantially the form thereof as presented to this meeting or with such changes therein as shall be approved by the Chairman or the Vice Chairman. The officers of the Board are hereby authorized to take such further action as is necessary to carry out the intent and purposes of the letter of intent as executed.

3. The Chairman or the Vice Chairman of the Board is hereby authorized to conduct such public hearings on behalf of the Board as the Applicant may request with respect to the project.

**HEB-2024-05**



I hereby certify that the foregoing resolution of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee was duly and lawfully adopted by its Board of Directors on February 19, 2024, at a duly called meeting at which a quorum was acting throughout, and I furthermore certify that such resolution has not been amended or modified in any respect.

Executed as of this 19th day of February, 2024.

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

By: \_\_\_\_\_  
Name: Hicks Armor  
Title: Chair

ATTEST:

\_\_\_\_\_  
Richard Johnson, Secretary

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

Hicks Armor, Chair  
Gregg T. Gentry, Vice-Chair  
Richard Johnson, Secretary  
Johnika Everhart, Member  
Andrea L. Smith, Member  
Brian Erwin, Member  
Dr. Patti Skates, Member  
Hank Wells, Member

Phillip A. Noblett, Counsel

February 19, 2024

One Westside Phase 1B, LP  
Chattanooga, Tennessee

Ladies and Gentlemen:

The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (the "Board") has been informed that One Westside Phase 1B, LP or an affiliate thereof (the "Applicant"), is considering the acquisition, construction and equipping of an approximate 166-unit housing facility for low and moderate-income citizens to be located at 501 West 12th Street, Chattanooga, Tennessee. The above-described acquisition, construction and equipping with regard to such facility constitutes a "project" within the meaning of T.C.A. § 48-101-301.

After investigation of the nature of the proposed project, the Board has determined that the financing of the project will improve the quality and availability of housing in the City of Chattanooga, Tennessee, and will contribute to the general welfare of the citizens of the City. Therefore, it is the belief of the Board that in assisting the financing of the project, the Board will be acting in furtherance of the public purposes for which it was created.

Accordingly, in order to assist the Applicant in the financing of the project and in order to carry out the purposes for which the Board was created, the Board hereby makes the following proposals:

1. The Board will issue, and sell to a purchaser to be designated by the Applicant prior to issuance, revenue bonds (the "Bonds") in the principal amount not to exceed \$35,000,000 to provide financing for the project. The Bonds shall be limited obligations of the Board payable solely out of the revenues and receipts derived from the project including loan payments from the Applicant obtained in connection with the financing of the project. In no event shall the Bonds be general obligations of the Board, its directors, or the City of Chattanooga, Tennessee.

2. The terms of the Bonds (maturity schedule, interest rate, denominations, redemption provisions, etc.) will be determined by agreement among the Board and the Applicant, subject to compliance with all applicable state and federal requirements, and all bylaws and policies of the Board.

3. Prior to delivery of the Bonds, the Board and the Applicant will enter into a loan agreement pursuant to which the proceeds from the sale of the Bonds will be used for the purposes hereinabove indicated and the Applicant will be obligated to make payments sufficient to cover all debt service requirements on the Bonds.

4. The Board will enter into a trust indenture with a trustee to be nominated by the Applicant and subject to the approval of the Board and/or a purchase contract with the purchaser of the Bonds. Such indenture and/or purchase contract will assign the loan agreement and all collateral therefor and all revenues received thereunder for the benefit of the bondholders. The terms and provisions of such indenture and/or purchase contract shall be agreed upon by the Board, the Applicant and the purchaser of the Bonds.

5. The Board hereby authorizes the Applicant to commence the acquisition, construction and equipping of the project as soon as practicable so that the inhabitants of the State of Tennessee might benefit from the project without delay. The Applicant may advance any interim funds required and be reimbursed from the proceeds of the Bonds, to the extent allowed by applicable law.

6. Upon the issuance, sale and delivery of the Bonds, the provisions of this proposal and the agreement resulting from its acceptance by the Applicant shall have no further effect and, in the event of any inconsistencies between the terms of this proposal and the terms of any loan agreement and/or indenture or purchase contract the provisions of such latter documents shall control.

7. If for any reason the Bonds have not been sold within eighteen (18) months from the date hereof, the provisions of this proposal and the agreement resulting from the acceptance by the Applicant shall, at the option of either party to be evidenced in writing, be canceled and neither party shall have any rights against the other and no third party shall have any rights against either party except:

- (a) The Applicant will pay the Board for all expenses incurred by the Board in connection with the financing of the project;
- (b) The Applicant will pay the out-of-pocket expenses for attorneys for the Board incurred in connection with the project and will pay attorneys for the Board reasonable fees for legal services related to the project; and
- (c) The Applicant will indemnify and hold the Board harmless against any liability which may be incurred by the Board with respect to the project.

8. The Board agrees to cooperate with the Applicant in executing, along with the Applicant, a Multi-Family Tax-Exempt Bond Authority Application (the "Application") to be prepared by the Applicant and submitted to the Tennessee Housing Development Agency ("THDA") with respect to the Project. The Applicant acknowledges that all information provided in the Application, other than the name and address of the Board, is to be provided by the Applicant and not by the Board and that the Board has no responsibility as to the accuracy of such information other than as to the name and address of the Board.

The Applicant agrees to indemnify and hold harmless the Board and its directors, officers, employees and agents from any claims, liabilities, costs or expenses that may arise as a result of the inaccuracy of any information contained in the Application (other than the name and address of the Board) or the submission of the Application.

[Remainder of Page Intentionally Left Blank]

If the foregoing proposal is satisfactory to you, you may indicate by signing the following acceptance and returning a copy to the Board. This proposal and your acceptance will then constitute an agreement in principal with respect to the matters herein contained.

Yours very truly,

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

By: \_\_\_\_\_  
Name: Hicks Armor  
Title: Chair

ACCEPTANCE OF PROPOSAL  
OF  
THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF  
THE CITY OF CHATTANOOGA

BY

ONE WESTSIDE PHASE 1B, LP

The terms and conditions contained in the foregoing proposal by The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee are hereby accepted by One Westside Phase 1B, LP as of the date first written above.

One Westside Phase 1B, LP

By: One Westside 1B GP Corporation,  
a Tennessee nonprofit corporation,  
its general partner

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

**A. The contact information for the applicant, the proposed development name, the number of units and bedroom mix, geographic location, type of development (including, but not limited to new construction located in a QCT).**

**Contact Information:** Columbia Residential, Christina Demaioribus, Director of Development, ChristinaD@columbiare.com, 404-354-0550

**Development name:** Westside Phase I

**Number of Units:** 230 units / New Construction

**Bedroom Mix:** Westside Phase I will be home to 230 families, comprised of 110 one-, 110 two- and 10 three-bedroom apartments. To achieve the Plan’s mixed income community goal, 40% of the units will be reserved for residents of College Hill Courts (40% AMI) to move directly into the new housing and those residents will continue to pay 30% of their take-home income. The operational subsidy will be project-based vouchers (PBV) from the Chattanooga Housing Authority. Unrestricted units at market rents will account for 25.2% of the total, and the remaining 34.8% will be at 60% AMI and 80% AMI. For a more detailed breakdown of the bedroom mix, please refer to the attached Rent & Bedroom Mix Table 1.

This substantial first phase is critical to kick starting the entire redevelopment, providing new homes for residents prior to demolition of obsolete units, demonstrating the successful mixed-income model, and setting the tone for transformation of the area. This development will be the largest new affordable housing development in downtown Chattanooga in many years.

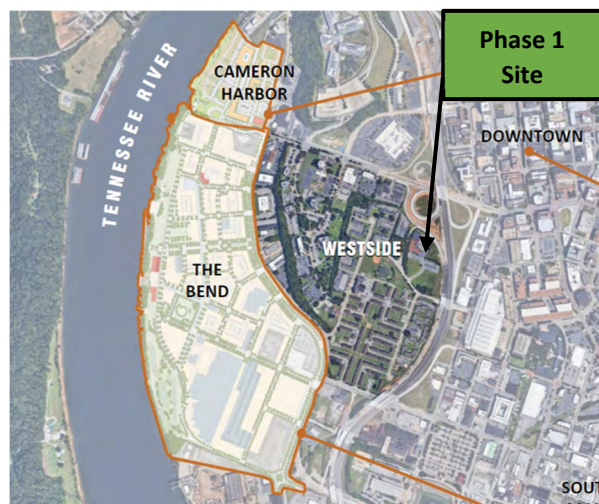
**Geographic Location:** 501 W 12<sup>th</sup> St Chattanooga, TN 37402, Hamilton County. In QCT (47065001600).

**Type of Development:** New Construction Family in multiple 3 and 4 story multi-family buildings surfaced parked and one 5 story podium parked structure on 5.5-acre parcel (40 units/acre)

**B. The goals and/or priorities of the project as a part of a master-planned development in a redevelopment area and the impact of the twinning approach in helping meet the goals of the redevelopment area master plan.**

The Westside Evolves Transformation Plan was developed in 2020/2021 by the City of Chattanooga, Chattanooga Housing Authority and the Chattanooga Design Studio alongside help from the EJP Planning team ([www.westsideevolves.com](http://www.westsideevolves.com)). The plan focuses on redeveloping 629 existing public housing units called College Hill Courts and Gateway Tower and the surrounding 30-acre neighborhood. The goals of the plan include:

- develop high quality new homes for all residents.
- avoid displacement of existing residents by deploying “Build First”, building new units first prior to any demolition of existing units.
- Create a mixed income community which will require densification of the community.
- Provide 497 units of replacement housing for residents of College Hill Courts, through multiple phases. 92 of the units will be in this proposed first phase.



Westside Phase I’s mixed income approach, location and density are critical to the enactment of these goals.

In support of the Plan, the City donated the land to Chattanooga Housing Authority (CHA) in 2023. It is strategically located along the critical 12th Street link between downtown and the Bend riverfront development that is featured in the Plan and located across the highway from the Chattanooga Convention Center but also directly adjacent to College Hill Courts. This site provides the promise of improvement to both existing residents and downtown. Both its location and size are critical to the promise of “Build First” for longtime residents of the 80+ year old College Hill Courts to have the opportunity to move directly into new housing. To accommodate existing residents, 92 units will need to be built in this first phase before demolition of College Hill Courts occurs. To create a mixed income community with 40%



*Artist rendering of Phase I playscape and walkability.*

of the units for extremely low-income households (40% AMI) and the remaining as market and workforce housing (60% to 80% AMI), the total unit count for this critical first phase of housing needs to be about 230 units.

Twinning is critical to achieving this large unit count – which is essential to the densification of the area and to rehousing of existing residents.

Twinning allows for project size that is contemplated in the Plan. It provides the

ability to monetize excess basis from a traditional stand-alone 9% transaction and utilize it in the 4% bond phase. This reduces the required gap financing needed to achieve 230 units, making Phase I feasible at this time when CNI funding is not yet available. This first phase in implementing the housing component of the Plan, Westside Phase I creates the template and provides momentum for what is to come in the neighborhood in the coming years. It will mix public housing replacement units with unrestricted market rate apartments and affordable workforce housing- all in a development of market rate quality and services. Ensuring this is completed to the high standards needed is critical to fulfilling the promise of a mixed-income community that serves all Chattanoogaans.

**C. Each project team member’s track record with tax-exempt bond and LIHTC projects and demonstrated capacity to complete financially complex developments.**

Columbia Residential and the Chattanooga Housing Authority are partners in the ownership and development of the Westside Phase I, including both Phase IA (the 9%) and Phase IB (the 4%) limited partnerships. Both companies have years of experience in bond and LIHTC project execution, particularly where public housing and mixed income are involved. A twinning structure within a large multi-phase redevelopment is a particularly complex transaction that the partnership is qualified and prepared to professionally execute.



*Westside Phase I. Looking north up 12th street. Artist rendering.*





Columbia Residential is an integrated affordable housing development company with over 30 years of experience. Columbia Residential currently has more than 9,500 homes under management in some 75 communities and maintains an active development pipeline. Columbia’s development and management portfolio reflects a wide range of housing types, including large master planned multi-phase developments, historic redevelopments, mixed-income family housing and senior communities, and supportive housing across Texas, Louisiana, Florida, and Georgia. Columbia Residential understands the complexity of the twinning implementation within a large redevelopment because of our direct work experience in very similar transformational work with layered and innovative financing with public housing agency partners. As our Founder Noel Khalil would say, “We don’t do the 100-piece puzzles, we do the 1,000-piece puzzles.” Indeed, Columbia assisted the Atlanta Housing Authority in some of the nation’s earliest public housing transformations in the late 1990s and early 2000s using tax credits. Columbia also was master developer of the largest neighborhood redevelopment in New Orleans, following Hurricane Katrina, the 52-acre mixed-income, mixed-use (686 units), Columbia Parc at the Bayou District. In total, Columbia has led ten large-scale, multi-phased complex public housing redevelopments.

Columbia Residential is led by principals Jim Grauley, Chief Executive Officer and Carmen Chubb, President, who together bring more than 60 years of development, financing, and policy experience to the organization. Columbia Residential Properties, LLC is led by Aaron Swain, President of Property Management and Operations. Aaron Swain brings over 30 years of experience in managing affordable and mixed-income properties and oversees management, compliance, accounting, and resident services. Columbia completed five (5) communities with 947 units in the past year and has completed 108 bond transactions across multiple states and over 13 LIHTC-financed transactions in the last 5 years.

Total Units Developed	Total LIHTC Unit Count	Total Bond Unit Count	Total Projects Developed	Total Number of Bond Projects
10,630	8,740	1,890	82	10

The Chattanooga Housing Authority (CHA) is a governmental authority which carries out public housing and urban development programs as its primary activities. CHA has developed, acquired, and successfully managed apartment communities throughout the Chattanooga area for the last 85 years. CHA has carried out almost \$100,000,000 in urban renewal/redevelopment projects and is authorized under the Tennessee Code Annotated to carry out public-purpose acquisition projects for the City of Chattanooga and Hamilton County if requested.

CHA manages a portfolio of 1,453 Low Income Public Housing units, and 4,025 vouchers in the Housing Choice Voucher Program. CHA has one PBV/LIHTC property, Cromwell Hills, with 200 units. In addition, CHA has recently converted six properties to RAD PBRA: Emerald Villages, Dogwood Manor, Mary Walker Towers, Fairmount Apartments, Boynton Terrace, and Greenwood Terrace totaling 764 units.

The CHA is a THDA-certified tax credit management entity currently managing 2,732 units. With a well-qualified and experienced staff, the CHA is an expert in managing the complexity of the statutory and regulatory requirements associated with affordable housing, and has been involved in eight successful tax credit developments with a third party developer to date.

CHA is led by Elizabeth F. McCright, J.D., who has worked in the subsidized housing industry for 34 years, having served as the Deputy Director of the Worcester, MA Housing Authority, the Executive



Director of the Springfield, MA Housing Authority, and has served as Executive Director of the Chattanooga Housing Authority for over 16 years. Naveed A. Minhas, P.E. is the Director of Development for the Chattanooga Housing Authority, and has over 50 years of civil engineering, business administration, real estate, design and construction experience. Together they bring over 80 years of experience in development, financing, and policy experience to the organization. Members of the CHA’s Development Team bring a combined 76 years of experience to this project, and have education in Architecture, Interior Design, Construction Management, and Business administration.

Total Units Developed	Total LIHTC Unit Count	Total Bond Unit Count	Total Projects Developed	Total Number of Bond Projects
789	789	359	8	3

The CR/CHA team has recruited a best-in-class Tennessee-based design team, led by Nashville-based Smith Gee Studios AIA, Chattanooga based Tinker Ma, AIA, and Ragan-Smith Engineers. Legal and bond structuring expertise will be provided by Nashville-based Dwayne Barret (Reno Cavanaugh), Raymond James, bond underwriter, and Bass Berry law firm as bond counsel.

**D. How the project will utilize the twinning approach to optimize resources.**

As with most affordable and mixed-income developments around the United States, the cost, inflationary and interest rate pressures have far outstripped the capacity of typical LIHTC allocations, resulting in substantially larger gap funding needed for each development and/or smaller, less efficient communities to build and operate. Westside Phase I commences within this environment. The promise of the Twinning Round program effectively reduces the financing gap needed, because twinning allows for this first phase to optimize the tax credit equity generated from combined basis in both the 9% and 4% components of the transaction. Simultaneous construction and management of both components in twinning provides operating and cost efficiencies over developing both separately at different times. Twinning also allows gap funding raised for the total number of affordable units (230) to be targeted most efficiently to the transactions.

The total development cost of this first housing phase is budgeted at \$79,736,490 (\$346,680/unit). By seeking both 4% and 9% tax credits via twinning, we can close two separate projects simultaneously each with unique limited partnerships, costs, and ledgers, but allow the property to operate together as a seamless community for residents. To optimize use of the 9% and 4% credits, the 9% (Westside Phase IA) transaction is sized to be 64 units to maximize the basis needed for the requested 9% allocation of \$1,800,000 in credits. The remaining 166 units needed to achieve the 230-unit count are allocated to the 4% transaction (Westside Phase IB), wherein unrestricted credits are earned. Our current model estimates \$2,131,351 in annual 4% credits. Please see Table 2 for a more detailed breakdown.

Additionally, there is greater transactional and operational efficiency (lowering costs on a per unit basis) with a twinning approach thus allowing the collective project to raise a larger permanent mortgage and allowing us to reduce the number of loans.

**E. The proposed sources and uses of funds for the development, including a detailed narrative and model showing how the 9% LIHTC and tax-exempt bonds/4% LIHTC will be allocated.**

**Sources:** The number of LIHTC units in Westside Phase IA 9% transaction is sized (84.4% of the units are LIHTC) to match building design and to optimize qualified basis for the \$1,800,000 annual credit allocation. The Westside Phase IB 4% transaction has a larger first mortgage, subordinate cash flow loans



and gap funding as sources as it is a larger transaction with a larger share of the costs and a greater gap funding need given the 4% credits. To achieve the unit mix (combined 25% unrestricted units) needed for a competitive CNI grant application and to meet the goals called for in the Plan and demanded by the community, 71% of the 4% transaction units are LIHTC units.

The project based rental subsidies from the Chattanooga Housing Authority will directly assist 92 apartment units (approx. 40% of the total development). Residents will pay 30% of their income towards rent and utilities in the same manner they do today at the existing College Hill Courts public housing apartments. This operational subsidy on 92 of the units, along with the 80 additional LIHTC units and 58 unrestricted rent units, helps to support \$17,250,000 in first mortgage loan proceeds (22% of the capital stack collectively). \$15,250,000 of this first mortgage is on the Westside Phase IB 4% transaction because there are more units to support the large permanent loan. A \$2,000,000 first mortgage is placed on the smaller 9% transaction. Equity generated by each transaction is based on individual LIHTC allocated for each phase. Deferred developer fee, along with anticipated \$1,063,750 of 45L credit equity, is allocated between both transactions based on unit count. The City of Chattanooga, CHA and many philanthropic organizations have made funding commitments to this proposed twinning transaction as they see this as the critical start to the implementation of the Plan.

**Uses:** The land for each phase IA and IB will be ground leased from the Chattanooga Housing Authority. Each phase will fund a capitalized ground lease payment. The construction costs for each phase are allocated based on the building typology, unit mixes and based on our experience in the industry. Columbia Residential has priced the conceptual plans with a contractor active in the Chattanooga market to arrive at the construction and site work costs in the proforma. Due to the podium and parking structure being within the 4% transaction, there is a higher per unit construction cost in the 4% transaction than the 9% transaction.

See attached Table 2: Sources and Uses for additional information.

**F. The extent to which the proposed development would be at a financial disadvantage relying upon a traditional phased approach.**

The twinning approach is critical to the success of the Westside Phase I project because it allows for a larger initial housing phase (230 mixed-income units), lessens the gap required to achieve the density in this initial phase, allows for efficient leasing/amenity square footage to be constructed, re houses existing residents more quickly into high quality housing and allows for the redevelopment to occur in the CNI plan timeframe.

The larger phase allows for more replacement housing, which in turn allows demolition and future phases as part of the CNI application to proceed as scheduled, allowing for new homes for College Hill Courts residents in a timely manner. Utilizing twinning efficiencies, the gap to build 230 units is approximately \$18M. While this figure is large, the outstanding local support and identified sources allow this gap to be filled. Without twinning, the gap increases dramatically, resulting in a much smaller potential development and slowing the momentum of the overall master plan.

Without twinning, the options for Chattanooga's One Westside plan are much less feasible. For example, if the team redesigned the project into smaller 9% transactions of approximately 64 units, it would take multiple years of 9% transactions to build the necessary 230 units, and at higher cost due to cost inflation, separate transaction costs and re-mobilization for construction. This would significantly delay the relocation of College Hill Courts residents. It also assumes these 9% applications would be funded each year. Such small transactions, in our experience, are much more difficult to operate cost-effectively and are challenged for efficient management and provision of amenities to residents. The complexity in



construction would add construction and transaction costs such that the \$2M permanent mortgage would likely drop to a difficult to finance \$1M loan with additional soft financing required for each transaction. This is not a reasonable solution to achieving 230 units, given the need in Chattanooga. It is highly unlikely that we would be able to meet the required CNI 8-year build-out timeframe for the entire replacement of College Hill Courts units.

Yearly applications would likely increase the overall development costs due to more transactional costs and the threat of cost inflation.

A second option would be to pursue a 4% transaction only in which the gap would be insurmountable for Chattanooga, at approximately \$27,000,000: some \$9,000,000 larger than the current twinning model of \$18,000,000.

A third option would be to apply for 9% and 4% separately in 2024. Not only does this create the same construction coordination and cost issues outlined above, but it still does not allow for the excess basis to be monetized and thus the 4% transaction of 166 units alone would carry an estimated \$4 to \$5 million in additional gap funding need.

Clearly these alternatives are not optimal. If the phases were broken down into smaller transactions as the alternatives outline, doing so would extend the time for creating replacement housing for the existing residents. The residents of College Hill Courts have participated in years of planning and have become significantly invested in the Westside Evolves Transformation Plan. They deserve to be rehoused as quickly as possible and twinning is our best path forward. Twinning is critical to the 8-year replacement housing timeline required by the \$50 million CNI grant.

Although this project still requires multiple financing sources, twinning increases both the equity and the ability to obtain a larger first mortgage, thereby reducing the subordinate gap funding necessary to finance 230 units. The operational benefits of a larger phase will also accrue over time.

**G. Certification of compliance with all applicable requirements of Section 42 and this QAP (Qualified Allocation Plan).**

We certify that we will comply with all applicable requirements of Section 42 and the Tennessee Qualified Allocation Plan (QAP) for the year 2024.

**Westside Evolves Phase I Proforma (Twinning) Data**

**Table 1: Rent and Bedroom Mix**

<b>Unit Mix - Phase I Combined Transactions</b>						
<u>Unit Type</u>	<u>Total Units</u>	<u>% of total</u>	Replacement	Unrestricted		
			<u>Units-PBV</u> <u>40% AMI</u>	<u>(market)</u> <u>Units</u>	<u>Units at</u> <u>60% AMI</u>	<u>Units at</u> <u>80% AMI</u>
1-BR	110	48%	44	28	22	16
2-BR	110	48%	44	28	22	16
3-BR	10	4%	4	2	2	2
<b>Total</b>	<b>230</b>		<b>92</b>	<b>58</b>	<b>46</b>	<b>34</b>
		<i>% of total</i>	<i>40.0%</i>	<i>25.2%</i>	<i>20.0%</i>	<i>14.8%</i>
		<i>LIHTC Applicable Fraction:</i>			<i>74.8%</i>	

	<b>Phase I Combined</b>	<b>Phase I(A)</b>	<b>Phase I(B)</b>
	<i>Twinning- Combined</i>	9%	4%
Units	230	64	166
Bldg Type		2 garden style walk-up bldgs D&E	2 garden style & podium bldgs A, B, C
% of total units:	100.0%	27.8%	72.2%
1-BR units	110	30	80
2-BR units	110	30	80
3-BR units	<u>10</u>	<u>4</u>	<u>6</u>
<b>Total:</b>	<b>230</b>	<b>64</b>	<b>166</b>
HAP Repl. Units (40% LIHTC)	92	28	64
60% AMI LIHTC Units	46	26	20
80% AMI LIHTC Units	34	0	34
Unrestricted Market Units	<u>58</u>	<u>10</u>	48
<b>Total:</b>	<b>230</b>	<b>64</b>	<b>166</b>
Total LIHC Units	172	54	118
Applicable Fraction (LIHTC)	74.8%	84.4%	71.1%
Income Averaging %	53.3%	49.6%	54.9%

**Westside Evolves Phase I Proforma (Twinning) Data**

**Table 2: Sources and Uses**

	Phase I Combined	Phase I(A)	Phase I(B)
	Combined Contract	2-Bldgs units	64 3 bldgs & pkg structure - 166 units
<b>Construction Costs Allocation</b>			
Sitework	\$7,500,000	\$2,500,000	\$5,000,000
Vertical Costs	\$41,474,345	\$9,435,413	\$32,038,932
General Conditions	\$2,448,718	\$596,771	\$1,851,947
Overhead	\$979,487	\$238,708	\$740,779
Profit	\$2,938,461	\$716,125	\$2,222,336
Bldrs Risk	\$521,820	\$130,455	\$391,365
P&P Bond	<u>\$618,600</u>	<u>\$154,650</u>	<u>\$463,950</u>
Total Construction Contract:	\$56,481,431	\$13,772,122	\$42,709,309
Contingency (5.0%)	\$2,767,051	\$674,351	\$2,092,700
<b>Combined Contract+Conting.</b>	<b>\$59,248,481</b>	<b>\$14,446,473</b>	<b>\$44,802,009</b>
Total Contract Price/Unit	\$245,571.44	\$215,189	\$257,285
Total Construction/Unit	\$257,602	\$225,726	\$269,892
Total Development Costs:	\$79,736,490	\$19,358,042	\$60,378,448
Total Eligible Basis:	\$75,916,660	\$18,256,262	\$57,660,398
Total Qualified Basis:	\$73,308,603	\$20,024,837	\$53,283,766
Total Annual Credits Allocation:	\$3,931,351	\$1,800,000	\$2,131,351
Total LIHTC Equity Raise:	\$36,361,357	\$16,648,335	\$19,713,022

SOURCES OF FUNDS: Combined Phase I Twinning (230 units)		\$ Amount
First Mortgage A (Bonds / TEL on 4%)	Conventional Lender	\$ 15,250,000
First Mortgage B (Conventl. perm- 9%)	Conventional Lender	\$ 2,000,000
2nd Mortgage Loan	City of Chattanooga HOME	\$ 3,000,000
3rd Mortgage Loan	Other Subordinate Debt	\$ 4,000,000
4th Mortgage Loan	CHA Charitable Benefit Corp	\$ 11,300,000
45L Energy Credit Equity	45L/Other grants	\$ 1,063,750
LIHTC Equity - 9% allocation	THDA allocation / LP investor	\$ 16,648,335
LIHTC Equity - 4% allocation	THDA allocation / LP investor	\$ 19,713,022
Deferred Development Fee	developer / CHA note	\$ 6,761,384
<b>Total Sources of Funds</b>		<b>\$ 79,736,491</b>
USES OF FUNDS		\$ Amount
Land Acquis. (Capitalized Ground Lease to CHA)		\$ 500,000
Construction Hard Costs+contingency		\$ 59,248,480
Construction/Permanent Financing Costs		\$ 3,932,500
Predev & Professional Fees, Permits		\$ 2,797,600
Local Govt Fees/permits		\$ 459,330
LIHTC & Equity Costs		\$ 633,780
Developer Overhead & Fee		\$ 9,750,000
Start-Up & Reserves		\$ 2,414,801
<b>Total Uses of Funds (TDC)</b>		<b>\$ 79,736,491</b>



# City of Chattanooga

## Mayor Tim Kelly

January 18, 2024

Ralph Perrey  
Executive Director  
Tennessee Housing Development Agency  
502 Deaderick St., Nashville, TN 37243

Re: Support for Westside Phase I and II Twinning Application

Dear Mr. Perrey:

On behalf of the City of Chattanooga (City), I am pleased to support the One Westside Phase IA and IB application to THDA for twinning. We are encouraged by THDA innovation and support of the Twinning Pilot, as critical for allowing Chattanooga to commence a more substantial phase of housing redevelopment.

The transformation of the One Westside neighborhood is a major city initiative and an important priority for my administration. In furtherance of this transformation effort, the city has already committed substantial funding towards the Westside redevelopment effort, contributed the land for this first phase of development, established a TIF district to fund new public infrastructure for the Westside and The Bend, and rezoned the property to allow for the master plan implementation. The City is a co- applicant and neighborhood implementation entity for the CNI grant application to HUD, and this first phase is very important for competitiveness of that application.

Achieving 230 units of mixed income housing in this initial phase is critical to the implementation of the Plan and the City looks forward to partnering with THDA as we work together to ensure the success of One Westside Plan.

Sincerely,

Tim Kelly  
Mayor, City of Chattanooga

NOTICE OF A PUBLIC MEETING AND PUBLIC HEARING OF THE HEALTH,  
EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF  
CHATTANOOGA, TENNESSEE RELATIVE TO A REVENUE BOND ISSUE

NOTICE IS HEREBY GIVEN that The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (the "Board") will hold a public meeting and public hearing on February 19, 2024 at 12:30 p.m. in the John P. Franklin, Sr. Council Building Assembly Room or J.B. Collins Conference Room of the City Council Building located at 1000 Lindsay Street in Chattanooga, Tennessee to consider and act upon all business which may properly come before the Board, said business to include, but not necessarily be limited to, (i) the consideration of a payment in lieu of tax agreement for DGA Shallowford LP and (ii) the issuance of the Board's exempt facility revenue bonds in the total principal amount not to exceed \$35,000,000 (the "Bonds"), the proceeds of which, if issued, would be loaned to One Westside Phase 1B, LP for the purposes of financing the acquisition and construction of an approximately 166 unit housing facility for low and moderate-income citizens (the "Project") located at 501 West 12<sup>th</sup> Street in Chattanooga, Tennessee. The expected initial principal user of the Project is expected to be One Westside Phase 1B, LP.

THE BONDS, IF ISSUED, WOULD NOT REPRESENT OR CONSTITUTE A DEBT OR PLEDGE OF THE FAITH AND CREDIT OR THE TAXING POWER OF THE BOARD, THE CITY OF CHATTANOOGA, THE STATE OF TENNESSEE, OR ANY POLITICAL SUBDIVISION THEREOF.

The public hearing referenced above will be held pursuant to the requirements of Section 147(f) of the U.S. Internal Revenue Code of 1986, as amended. Any persons interested in the issuance of the Bonds or the location or purpose of the assets to be financed or refinanced with the proceeds of the Bonds is invited to attend the public hearing (which may be continued or adjourned to a later date), and they will be given an opportunity to express their views both orally and in written form concerning the proposed issuance of the Bonds and the financing and refinancing of the projects with the proceeds thereof. For further information, contact Phillip A. Noblett, Esq., City of Chattanooga Attorneys' Office, 100 East 11th Street, Suite 200, Chattanooga, Tennessee 37402, (423) 643-8250.



RESOLUTION

A RESOLUTION RESCINDING RESOLUTION NO. HEB-2023-14 DATED NOVEMBER 20, 2023, ALLOCATING AND APPROVING AN AWARD OF ONE MILLION DOLLARS (\$1,000,000.00) TO CHATTANOOGA NEIGHBORHOOD ENTERPRISE (CNE) FROM THE AFFORDABLE HOUSING FUND TO EXPAND AFFORDABLE HOUSING ACROSS THE CITY FOR LOW AND MODERATE INCOME INDIVIDUALS FOR FIFTY-TWO (52) UNITS OR RENTAL HOUSING AND EIGHTY-TWO (82) ADDITIONAL UNITS IN 2024.

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NOW THEREFORE, BE IT RESOLVED BY THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, That it is hereby rescinding Resolution No. HEB-2023-14 dated November 20, 2023, allocating and approving an award of \$1 million to Chattanooga Neighborhood Enterprise (CNE) from the Affordable Housing Fund to expand affordable housing across the City for low and moderate income individuals for 52 units or rental housing and 82 additional units in 2024.

ADOPTED: February 19, 2024

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

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Hicks Armor, *Chair*

ATTEST:

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Richard Johnson, *Secretary*

**HEB-2024-06**

**AMENDED BY-LAWS**  
**OF THE**  
**HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD**  
**OF THE CITY OF CHATTANOOGA, TENNESSEE**

A corporation organized and existing under the  
laws of the State of Tennessee.

**Article I - Offices**

The principal office of the corporation in the State of Tennessee shall be located at 100 East 11<sup>th</sup> Street, Suite 200, Chattanooga, Hamilton County, Tennessee 37402. The corporation may have such other offices in the City of Chattanooga, Tennessee, as the Board of Directors may designate or as the business of the corporation may require from time to time.

**Article II - Board Meetings**

Section 1. Annual Meeting. The Board shall hold annual meetings at its principal office or at such other offices in the City of Chattanooga, Hamilton County, Tennessee, as the Board of Directors may designate, on the ~~fourth~~third Monday~~Wednesday~~ of May at the hour of 12:~~00~~30 p.m. if not a legal holiday, but if a legal holiday, then on the business day next following.

Section 2. Special Meetings. Special meetings of the Board may be held at any time, and the place and hour shall be fixed in the notice. Such meetings may be called by the Chair or at the written request of any three (3) members of the Board. The meetings may be held for any purpose or purposes, unless otherwise prescribed by statute. Calls for or notices of special meetings shall specify the object of such meeting, and only objects so specified shall be considered.

Section 3. Place of Meeting. The Board may designate any place within Chattanooga, Tennessee, as a place of meeting for any annual meeting or for any special meeting called by the Board. If no designation is made, the place of meeting shall be the registered office of the corporation, designated in Article I herein.

Section 4. Notice of Meeting. Written or printed notice stating the place, date, and hour of the meeting, and in case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered not less than seven (7) days nor more than thirty (30) days before the meeting, either personally or by mail, by or at the direction of the Chair or the Secretary, or the persons calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Board member at his or her address, with postage thereon prepaid.

Section 5. Voting. Only members of the Board shall be entitled to vote at the regular and special meetings of the Board. At all meetings, each Board member shall be entitled to one (1) vote.

Section 6. Quorum. A majority of the members of the Board shall be necessary for quorum. When a quorum is present, a majority of those present in person shall decide any question before the meeting.

Section 7. Proxies. The Chair shall specifically direct in connection with each meeting whether proxies will be accepted for the purpose of a quorum and of voting upon matters to come before the Board, and his or her direction shall be controlling. Notice of each meeting shall specify whether or not proxies will be acceptable.

Section 8. Meetings Public. All meetings of the Board shall be open to the public as provided by Tennessee Code Annotated, Section 8-44-101 et. seq.

Section 9. Proceedings in Board Meetings:

1. The Board Members, except the Chair, shall address the Chair from his/her appropriate seat, and no Board Member shall be recognized by the Chair unless he/she be in his/her proper place. Board Members shall have a regularly assigned seat in the Board Chamber.
2. Every motion, resolution, or ordinance, must be moved by a Board Member and seconded by another Board Member. The fact that any Board Member moves adoption of a resolution or motion shall not prevent the Board Member from casting a negative vote on said resolution or ordinance. Upon failure of a second, the Chair shall declare the motion failed for lack of a second and the motion shall not be considered further.
3. All motions shall be subject to debate except the following motions:
  - a) To adjourn
  - b) To Lay on the Table (except that all persons who have sought recognition shall be heard)
  - c) To Defer (except that all persons who have sought recognition shall be heard)

d) For the Previous Question provided, however, the proponent of any measure sought to be tabled shall have the right to be heard after the motion To Table is made and before said motion is put to vote. Also, all Members of Board who have sought recognition prior to motions To Table or To Defer shall be recognized before said motion is voted upon.

4. When any question or motion is under debate in the Board, the following motions only shall be in order and may be entertained by the Chair:

- a) To Adjourn
- b) To Lay on the Table
- c) To Postpone to a Day Certain
- d) To the Previous Question
- e) To Commit
- f) To Amend
- g) To Postpone Indefinitely

Each of said motions shall take precedent in the order set out herein.

It shall take ~~five four (54)~~ "yes" or ~~five four (54)~~ "no" votes to adopt or defeat any action. Less than ~~five four (54)~~ votes do not constitute any action at all by the Board.

- 5. A roll call vote shall be taken by the Chair on all resolutions involving approval of Payment in lieu of taxes Resolutions, Resolutions for the issuance of bonds or upon demand of any Member of the Board, even immediately after the vote. Any Resolution may be postponed by affirmative action of Board from week to week or to a day certain by majority vote. After the Chair has put a question, or after there has been a roll call vote of the Board, the Chair shall not entertain a motion until a decision of the Board has been declared by the Chair.
- 6. Any Board Member may appeal to the Board from any ruling of the Chair, and a majority vote of the Board Members present shall decide the appeal.
- 7. No one other than a Board Member may address the Board, except with the permission of the Chair, provided that the Chair's ruling may be appealed to Board in the same manner as any other ruling.
- 8. In case of any disturbance or disorderly conduct in the Board Chamber, the Chair shall have the power to order same to be cleared, or have persons removed.
- 9. The Board may change the order of business upon majority vote of those present.
- 10. In the case of public hearings which debate the passage of any Resolution or Motion, the Chair may set time limitations in advance of the hearings; provided, however, that equal time be afforded to those who support such proposals and those

who are in opposition. In the case of group opposition or group support, the Chair may limit the number of spokespersons.

11. In the case of hearings to consider Resolutions on Payments in lieu of Taxes or Resolutions involving Bond Issuances by the Board, the following procedures shall be followed:
  - a) The case shall be presented by a member of the staff of the Office of Economic and Community Development.
  - b) The applicant shall be granted a maximum of nine (9) minutes for oral presentation plus two (2) minutes for rebuttal.
  - c) Spokespersons for the opposition shall be granted equal time.
  - d) Discussion between Board Members shall not be interrupted by either the applicants or the opponents, nor by any other members of the public present in the Board Chamber. The Chair shall strictly enforce these rules.
12. Persons seeking to speak during the section reserved for Recognition of Persons Wishing to Address the Board on Non-Agenda Matters shall seek recognition at the conclusion of the regular business on the agenda, and the Chair will recognize those persons in the proper order of raising their hands. Recognition of any persons who failed to raise their hands will be discouraged, but final decision shall rest with the Chair.
13. If any question shall arise which is not provided for in these Rules, the same shall be governed by Roberts Rules of Order, which is hereby adopted, except as to matters otherwise governed by Charter, state law, or ordinance.

Section 10. Other Meetings of the Board:

1. The Board shall meet in regular meetings monthly when business is required at ~~12:00 noon~~ 3:30 p.m. every ~~third~~ fourth (~~3rd~~ 4<sup>th</sup>) ~~Monday~~ Wednesday in the Board Chamber. The Board shall only be required to hold special meetings for items of extreme emergency which have been approved by the Chair and one other member. All costs of notifications for any special meetings shall be borne by the applicant who requires such special meeting to occur.
2. No rule(s) of the Board's Rules of Procedure may be changed without receiving an affirmative constitutional majority. A constitutional majority is defined to be a majority of the number of Members to which the Board is entitled, currently ~~five~~ (54).

Notice of a proposed rule of procedure change must be communicated in writing, to each Board Member at least seven (7) days prior to consideration by the Board. Said notice shall state the general nature of the proposed rule and the date on which the sponsor intends to present the proposal to the Board.

These rules may be amended at any time by a majority vote of the Board.

**Section 11. Recognition of Members of the Public on Non-Agenda Matters:**

The following procedural rules relative to recognizing members of the public who wish to address the Board on a matter not on the regular meeting agenda shall apply:

Public Comment: At the end of each business meeting the Chairperson will recognize members of the public who wish to address the Board. The following procedural rules will apply:

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- (a) Each speaker wishing to address the Board shall be recognized only at the microphone provided for that purpose.
- (b) No person shall have more than three (3) minutes to speak.
- (c) The speaker may address the Board only upon matters within the legislative and quasi-judicial authority of the Board. The speaker may not address the Board on matters which are not under the authority of the Board and which are regulated by other governmental bodies or agencies.
- (d) The speaker shall not be permitted to use any vulgar or obscene language, nor use the floor to personally attack or personally denigrate others. The speaker should address the Board as a whole and not make comments directed towards individual Board members.
- (e) The Chair shall not permit Disorderly Conduct or Disrupting a Public Meeting which is prohibited by Tennessee law. A person commits an offense if the person substantially obstructs or interferes with the meeting by physical action or verbal utterance with the intent to prevent or disrupt a lawful meeting or gathering.
- ~~1) Each speaker wishing to address the Board shall be recognized only at the microphone provided for that purpose.~~
- ~~2) The speaker may address the Board only upon matters within the legislative and quasi-judicial authority of the Board.~~
- ~~3) Each speaker shall limit his or her remarks to three (3) minutes, unless permission for additional time is provided.~~
- ~~4) The speaker shall not be permitted to use any vulgar or obscene language.~~
- ~~5) The use of the floor by persons addressing the Board shall not be used to personally attack or personally denigrate others.~~

~~6) The Chair is prohibited from recognizing any person, neighborhood association or organization to speak to the City Board during the “non-agenda matters” portion of the agenda more than twice in any thirty (30) day period. Clerk will inform Chair prior to each regular meeting of the names of persons that fall in this category.~~

~~7) Persons, associations or organizations will be allowed to address the Board only once per day. Such a presentation can be made during the agenda session, committee meetings or regular session of City Board.~~

### **Article III - Responsibilities of the Board**

Section 1. General Powers. The business and affairs of the corporation shall be managed by the members of the Board.

Section 2. Number, Tenure, and Qualifications. The number of Board members of the corporation shall be nine (9) or not less than seven (7) as set forth in Tennessee Code Annotated, Section 48-101-307. Board members shall serve for staggered terms of six (6) years each as appointed by the governing body of the City of Chattanooga, as provided by Tennessee Code Annotated, Section 48-101-307.

Section 3. Vacancies. Any vacancy occurring in the Board may be filled only by the governing body of the City of Chattanooga. Nominees for any vacancy on the Board shall be made in the same manner as provided by the Charter of the corporation and Tennessee Code Annotated, Section 48-101-307 for selection of the first Board. A Board member elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 4. Compensation. As provided by Tennessee Code Annotated, Section 48-101-307, all members of the Board shall serve without compensation.

#### Section 5. Organization of Board:

1. There shall be the following standing committees of the whole Board to be appointed annually by the Chair:
  - a) is there a need for committee, if not delete.
2. Any proposal or resolution may, upon motion, be referred by the Board to an appropriate committee for consideration and recommendation. The committee may, if it desires, hold public hearings hereon. In such hearings, all speakers shall be limited to five (5) minutes except by special permission of the Chair. Equal time shall be afforded for the proponents and opponents of any ordinance or resolution under consideration.
3. The agenda of the Board shall be prepared under the direction of Office of City Attorney, with administrative items to be submitted no later than 4:30 p.m. on

THURSDAY, no later than twenty (20) days preceding the Board meeting, to the Office of the City Attorney.

Any matter which has appeared on the agenda and has been acted upon by either a majority vote for approval or rejection may be brought before the Board for reconsideration upon proper motion of a Board Member and seconding motion by another Board Member.

The only requirements for this action are:

- a) The Member making the motion for reconsideration must have voted on the prevailing side of the initial vote.
  - b) Such motion for reconsideration must be made prior to closing of the meeting in which the vote was cast.
  - c) No matter, having been duly considered and rejected at one meeting, may be placed on the agenda by either a Member of the Board or the administration for further consideration until SIX (6) MONTHS following original consideration of the matter unless a majority of the Board votes to place the matter on the agenda.
4. All proposed resolutions, motions, and other matters submitted by Board Members shall be submitted in writing to the Office of the ~~(8)~~ City Attorney by 4:30 p.m. on THURSDAY, no later than twenty (20) days preceding the Board meeting except that the Chair, Vice-Chair or any two (2) Board Members may waive such notice of a resolution only in cases of extreme emergencies. Only items involving extreme emergencies may be added to the agenda by the Office of the City Attorney after the Thursday, 4:30 p.m. deadline; no later than twenty (20) days preceding the Board meeting provided, also, that if two (2) or more Members of the Board may voice their objections thereto and said items shall be added to the next regular agenda.
  5. All proposals, recommendations and communications submitted by Department of Economic and Community Development shall be in the Office of the City Attorney by 4:30 p.m. THURSDAY, no later than twenty (20) days preceding the Board meeting preceding the Board meeting.
  6. All other communications required by law to be presented to the Board shall be placed on the agenda.
  7. The City Attorney's staff shall send to the Board ~~Office electronically and mail~~ to all Board Members a copy of the agenda before 5:00 p.m. ~~FRIDAY-MONDAY a week~~ preceding each Board meeting or TUESDAY after if MONDAY is a holiday. A copy of any resolutions or motions on the agenda for consideration shall be sent to the Board Chair and emailed to each member, along with the agenda.



8. The City Attorney's staff, unless otherwise instructed by the Board, shall make such agenda available to the public and to the press by e-mailing time each FRIDAYMONDAY or TUESDAY after if MONDAY is a holiday preceding each Board meeting.

**Section 6. Code of Ethics:**

1. Members of the Board are expected to be prompt in their attendance of official meetings. All meetings shall be conducted in an orderly manner and according to the Rules of Procedure as adopted by this Board.
2. Conduct of individual Members during meetings of the Board is expected to reflect a total sense of respect for the office held by those assembled to conduct business. Members shall be courteous to one another, to any member of the administrative staff, as well as persons who may address the Board. A Member may not speak until recognized by the Chair and shall not be recognized the second time on the same subject until all Members who wish to speak have had an opportunity to do so. Any disorderly conduct shall be noted by the Chair, and the offending Member shall forfeit the privilege of the floor for the remainder of the meeting, except for the purpose of casting his vote.

**Article IV - Officers**

**Section 1. Officers - Number.** The officers of the corporation shall be three (3): one (1) Chair, one (1) Vice Chair, and one (1) Secretary-Treasurer.

**Section 2. Election and Term of Office.** The officers of the corporation to be elected by the Board shall be elected annually by the Board. Each officer shall hold office until his successor shall have been duly elected and shall have qualified, or until his or her death or until he or she shall resign or shall have been removed in the manner hereafter provided.

**Section 3. Removal.** Any officer elected by the Board may be removed by the Board whenever in its judgment the best interests of the corporation would be served thereby.

**Section 4. Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board for the unexpired portion of that term.

**Section 5. Chair.** The Chair shall be the principal executive officer of the corporation and, subject to the control of the Board, shall in general supervise and control all of the business affairs of the corporation. The Chair shall decide questions of order, subject to appeal of the Board by any Member, and shall put each question. The Chair shall have a vote on all matters. He or she shall, when present, preside at all meetings of the Board. He or she may sign, with the Vice Chair or Secretary-Treasurer of the corporation, any deeds, mortgages, bonds, contracts, or other

instruments which the Board has authorized to be executed, except in cases where the signing and the execution thereof shall be expressly delegated by the Board or by these By-Laws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties as may be prescribed by the Board from time to time. The Chair shall appoint all committees, unless otherwise directed by the Board, and shall have other powers granted to him/her hereunder. The Chair shall fix the order of business for any regular or special meeting of the Board. In the event the Chair of the Board becomes incapacitated or unavailable, the Vice Chair shall serve as Chair of the Board. In the event both are unavailable, the Board may elect a chair pro tem. The Chair shall have the authorization to set forth the rules and procedures for use of the Board building meeting space at the City Council meeting rooms.

Section 6. Vice Chair. In the absence of the Chair, or in the event of his or her death or inability or refusal to act, the Vice Chair shall perform the duties of the Chair, and so acting, shall have all the powers of and be subject to all the restrictions on the Chair. The Vice Chair shall also perform such other duties as from time to time may be assigned by the Chair of the Board.

Section 7. Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of the meetings of the Board in one or more books provided for that purpose; shall see that all notices are duly given in accordance with the provisions of these By-Laws as required by law; shall be custodian of the corporate records and accounts of the corporation; shall keep a register of the address of each Board member which shall be furnished to the Secretary-Treasurer by such Board member; shall in general perform all duties incident to the office of Secretary-Treasurer and such other duties as from time to time may be assigned by the Chair or by the Board.

**Article V - Contracts, Bonds, Loans,  
Mortgages, Leases, Checks, and Deposits**

Section 1. Contracts. The Board may authorize any officer or officers, agent or agents, to enter into any contract, including but not limited to mortgages and leases, or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loan shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in the name of the corporation unless authority is specifically given by a resolution of the Board. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents, of the corporation and in such manner as shall from time to time be determined by resolution of the Board.

Section 4. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board may select.

**Article VI – Seal**

This corporation shall have no seal.

**Article VII - Fiscal Year**

The fiscal year of the corporation shall begin on the first day of July and end on the thirtieth (30th) day of June in each year effective June 30, 2013.

**Article VIII - Dividends--Excess Earnings**

The Board may not pay dividends. Excess earnings, if any, shall be disposed of as provided by Tennessee Code Annotated, Section 48-101-314.

**Article IX - Waiver of Notice**

Whenever any notice is required to be given to any member of the Board of the corporation under the provisions of these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**Article X - State Enabling Statutes Controlling**

The provisions of Chapter 101, Title 48 of the Tennessee Code, relating to Health and Educational Facilities Corporations, Tennessee Code Annotated, Section 48-101-301, et seq., and the provisions of the Charter of Incorporation shall in all cases be controlling, and in any matter not specifically covered herein, or should any provision herein be in conflict, then the provisions of said statutes and the Charter shall control.

**Article XI - Amendments**

These By-Laws may be altered, amended, or repealed and any new By-Laws may be adopted by the Board after one hundred twenty (120) days' notice in writing to the governing body of the City of Chattanooga, all trustees for the holders of any bonds of the corporation then outstanding, and all purchasers and lessees of the corporation's projects, and after approval at two (2) meetings of the Board held not less than fifteen (15) days apart after the expiration of said one hundred twenty (120) day period.