

RESOLUTION

No. _____

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE TSO CHATTANOOGA DEVELOPMENT, LP, TO DELEGATE CERTAIN AUTHORITY TO THE HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD, AND TO AUTHORIZE THE MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES, IN SUBSTANTIALLY THE SAME FORM AS ATTACHED.

WHEREAS, pursuant to Tennessee Code Annotated, Section 48-101-312(b) the City of Chattanooga (the "City") is permitted to delegate to The Health, Educational, and Housing Facility Board of the City of Chattanooga (the "Board") the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Board upon a finding by the City that such payments are deemed to be in furtherance of the Board's public purposes; and

WHEREAS, TSO Chattanooga Development, LP (the "Company") is contemplating the operation of a mixed use facility consisting of ground floor commercial retail space, second floor office space, and upper floor residential rental units, including third floor on-site structured parking (collectively, the "Project") and because of the substantial economic benefits to the City and Hamilton County resulting from the Project, has asked the Board and the City Council to approve payments in lieu of ad valorem taxes; and

WHEREAS, the Council has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Board's public purposes as set forth within Chapter 101 of Title 48 of the Tennessee Code Annotated;

NOW, THEREFORE, BE IT RESOLVED BY THIS COUNCIL:

That we do hereby find that the Project is in the best interest of the City, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Board's public purposes; and

That, having made such a finding in this instance, we do hereby delegate to the Board the authority to negotiate and accept payments in lieu of ad valorem taxes from the Company, it being further noted that this delegation is for this purpose and this project only; and

That the Mayor is hereby authorized to enter into an Agreement for Payments In Lieu Of Ad Valorem Taxes, in substantially the same form attached hereto, with such changes thereto as he shall approve; and,

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

Adopted: _____, 2015

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

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2015, by and among THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the “Board”); TSO CHATTANOOGA DEVELOPMENT, LP, a Georgia limited partnership (the “Company”); the CITY OF CHATTANOOGA (the “City”); and HAMILTON COUNTY (the “County”) and is joined in, for purposes of evidencing their acceptance of the agency relationship established herein, by WILLIAM F. HULLANDER and his successors, acting in the capacity of HAMILTON COUNTY TRUSTEE (“Trustee”), and by WILLIAM C. BENNETT and his successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY (“Assessor”).

W I T N E S S E T H:

WHEREAS, the Company is contemplating the construction of a mixed use facility that will include ground floor retail, second floor office, third floor structured parking dedicated to the apartments, and upper level apartments totaling one hundred twenty-five (125) units consisting of one hundred five (105), one (1) bedroom and twenty (20), two (2) bedroom units (collectively, the “Project”), and has requested the Board’s assistance in the financing of the Project; and

WHEREAS, substantial public welfare benefits to the City and County will be derived from the Project; and

WHEREAS, the Board has agreed to take title to certain real and personal property that constitutes the Project, as described in Exhibit “A” attached hereto (the “Property”), which Property is to be owned by the Board and leased to the Company; and

WHEREAS, because the Property is to be owned by the Board, which is a public corporation organized under the provisions of Tennessee Code Annotated, §48-101-301, et seq., the residential units and dedicated parking structure of 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 Company and the Board have agreed that all In Lieu Payments made to the Board by the Company shall be paid to the Trustee, who shall disburse such amounts to the general funds of the City and the County in accordance with the requirements specified herein; 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 as its agent to receive the In Lieu Payments in accordance with the terms of this Agreement;

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

1. Designation of Assessor; Appraisal and Assessment of Property. The Board hereby designates the Assessor as its agent to appraise and assess the Property. The Assessor shall appraise and assess the Property in accordance with the Constitution and laws of the State of Tennessee as though the Property were subject to property taxes. The Assessor shall give the Trustee, the City Treasurer, the Board, and the Company written notice of any changes in appraisals of the Property in the same manner that notices are given to owners of taxable property. The Assessor shall make available to the Board and the Company all records relating to the appraisal and assessment of the Property.

2. Designation of Trustee; Computation and Billing of Payments In Lieu of Taxes. The Board hereby designates the Trustee as its agent to compute the amounts of the In Lieu Payments, to receive such payments from the Company and to disburse such payments to the City and the County. On or about October 1 of each year during the term of this agreement, the Trustee shall compute the taxes which would be payable on the Property if it were subject to property taxes, in accordance with the Constitution and laws of the State of Tennessee and in accordance with the appraisal and assessment of the Assessor. Each year hereunder, the Trustee shall send the Board and the Company a bill for appropriate amounts of In Lieu Payments (the "Tax Bill").

3. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Company shall pay to the Trustee the amounts indicated on the Tax Bill to be paid to the County, and the Company

shall pay to the City Treasurer the amounts on the Tax Bill to be paid to the City in accordance with the amount set forth below in Paragraph 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 each of the years 2015 and thereafter, the Company shall make payments with respect to the Property in an amount equal to one hundred percent (100%) of all City and County annual ad valorem property taxes levied in the base year of 2015 (the “Base Year”) on the value of the associated Property (land). The intent is for the City and County to continue receiving throughout the term of this Agreement all taxes assessed as to the value of the property in the Base Year exclusive of the improvements made in connection with the Project, which improvements are subject to the payment in lieu of tax obligations set forth in subsection (b), immediately below.

(b) Improvements. After construction of the Project is completed and the Assessor of Property has reassessed the then improved Property, the Company shall make In Lieu Payments in the amount required to satisfy the Hamilton County Schools portion of the property taxes that would be due on the improvements to the Property if it were subject to taxation (the “School Portion”), which the parties acknowledge and agree currently equates to [27.1%] of the amount of the total City and County taxes that would have been payable on the improvements to the Property if it were subject to property taxes. Additional In Lieu Payments on the residential and associated parking structure improvements will be as follows:

Year	City General Fund ¹	County General Fund ¹	County School Fund ¹
2017-2026	0%	0%	100%
2027	20%	20%	100%
2028	40%	40%	100%
2029	60%	60%	100%
2030	80%	80%	100%
2031	100%	100%	100%

¹ - The above percentages refer to the percent of the amount of taxes that would have been payable on the improvements to the Property if it were subject to property taxes.

As noted above, during such years 2017 to 2031, the Company shall continue to pay the School Portion attributable to the Hamilton County Schools. For any periods before or after such 14-year 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.

(c) For each of the years 2017 to 2031, the Company shall make In Lieu Payments with respect to the commercial and retail space on the first and second floors of the Property 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 that portion of the Property if it were subject to property taxes.

5. Penalties and Late Charges. The Company shall make the In Lieu Payments for each year before March 1 of the following year. All In Lieu Payments to the City and County shall be subject to penalties, late charges, fees and interest charges as follows:

(a) If the Company fails to make any In Lieu Payment when due, then a late charge shall be charged and shall also be immediately due and payable. The late charge shall be in the amount of one and one-half percent (1-1/2%) of the owed amount, for each month that

each payment has been unpaid. Such one and one-half percent (1-1/2%) per month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If the Company should fail to pay all amounts and late charges due as provided hereinabove, then the Board, the City or the County may bring suit in the Chancery Court of Hamilton County to seek to recover the In Lieu Payments due, late charges, expenses and costs of collection in addition to reasonable attorneys' fees, and if the Company should fail to pay all amounts and late charges due as provided hereinabove for more than two (2) years, the City or the County may, as to their respective In Lieu Payments, terminate the benefits of this Agreement and thereafter require the Company to pay one hundred percent (100%) of the amount of taxes that would have been payable on the Property for so long as such payment default continues as determined by the Mayor of the City and the Mayor of the County. In the event of a disagreement between the parties concerning whether or not the Company has cured a default, a representative of the Company may request that the City and County, as applicable, each meet to determine whether such default has been cured, and the Company and the City or the County, as the case may be, shall meet promptly thereafter and attempt in good faith to resolve such dispute. The Company may, in addition, file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

(c) If the Company should fail to reserve for lease at least twenty (20%) percent of the available units in the Project to persons whose income does not exceed eighty (80%) percent of the area median income as annually defined in the most recent guidelines published by the Department of Housing and Urban Development, then the City and the County

reserve the right but are not obligated to adjust the terms and conditions of the tax abatement granted to the Company under this Agreement for the Tax Abatement Period by requiring the Company to pay an additional amount of the In Lieu Payments on the Property. The City and the County may then require the Company to pay an amount up to the difference between the amounts of the In Lieu Payments required pursuant to Paragraph 4 of this Agreement and the amounts that the Company would have paid using the pro-rated percentage of the affordable housing units associated with the Tax Abatement Period. The County and the City shall look solely to the Company for any repayment obligations.

6. Disbursements by the Treasurer and Trustee. All sums received by the Treasurer pursuant to Paragraph 4 for the benefit of the City general fund shall be disbursed to the general funds of the City in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All sums received by the Trustee pursuant to Paragraph 4 for the benefit of the County general fund shall be disbursed to the general fund of the County in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All such sums received by the Treasurer shall be placed into an account for the use and benefit of the City. All such sums received by the Trustee shall be divided into an account for the use and benefit of the County. The account for the use and benefit of the City shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the City, and the account for the use and benefit of the County shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the County. All sums received by the Trustee pursuant to Paragraph 4 for the benefit of the

County school system shall be disbursed to the County and thereafter deposited into an account for the educational use and benefit of the County schools. The parties acknowledge and agree that all disbursements to the City and County pursuant to this Agreement are in furtherance of the Board's purposes as set forth in Tennessee Code Annotated §7-53-305.

7. Contest by the Company. The Company shall have the right to contest the appraisal or assessment of the Property by the Assessor and the computation by the Trustee of the amount of the In Lieu Payment. If the Company contests any such appraisal or assessment, then it shall present evidence to the Assessor in favor of its position. Likewise, if the Company contests any such computation, it shall present evidence to the Trustee in favor of its position. If the In Lieu Payments being contested shall be or become due and payable, the Company shall make such payments under protest. The Company and the Assessor or the Trustee, as the case may be, shall negotiate in good faith to resolve any disputes as to appraisal, assessment or computation. If the Company and the Assessor or the Trustee are unable to resolve a dispute, then the Company may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment and computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

8. Annual Report. The Company will provide, on or before January 31 of each calendar year during this Agreement, an annual report to the Board, the Mayor of the City, and the Mayor of the County, summarizing its investment in the Property and a certified rent roll. An independent audit of the annual report may occur if requested by the City or County during any calendar year of this Agreement.

9. Lien on Property. Any amounts which remain payable under this Agreement shall become a lien on the Property, and such lien shall be enforceable against the Property in the event that any payment owing hereunder is not timely made in accordance with this Agreement.

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

11. Leasehold Taxation. If the leasehold interest of the Company should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder. The Company agrees to cooperate fully with the Assessor in supplying information for completion of leasehold taxation questionnaires with respect to the Property.

12. Stormwater Fees. In addition to other requirements under this Agreement, the Company shall be responsible for all stormwater fees assessed by the City of Chattanooga against the Real Property.

13. Notices, etc. All notices and other communications provided for hereunder shall be written (including facsimile transmission and telex), and mailed or sent via facsimile transmission or delivered, if to the City or the Board, c/o Mr. Phillip A. Noblett, Suite 200, 100 E. 11th Street, Chattanooga, Tennessee 37402; if to the County, c/o Mr. Rheubin M. Taylor, County Attorney, Hamilton County Government, Room 204, County Courthouse, Chattanooga, Tennessee 37402-1956; if to the Company, c/o Mr. A. Boyd Simpson, TSO Chattanooga Development, LP, 1401 Peachtree Street, Suite 400, Atlanta, Georgia 30309; if to the Trustee, at his address at Hamilton County Courthouse, Chattanooga, Tennessee 37402; and if to the Assessor, at his address at Hamilton County Courthouse, Chattanooga, Tennessee 37402; or, as

to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall, when mailed by registered or certified mail, return receipt requested, Express Mail, or facsimile, be effective when deposited in the mails or if sent upon facsimile transmission, confirmed electronically, respectively, 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 as 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.

[Signature Page Follows]

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

ATTEST:

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

By: _____
Secretary

By: _____
Chairman

TSO CHATTANOOGA DEVELOPMENT, LP,
a Georgia limited partnership,
By: CHATTANOOGA DEVELOPMENT
GENERAL PARTNER, LP,
a Georgia limited partnership,
its sole general partner,
By: TSO CHATTANOOGA GP SPE, INC.,
a Delaware corporation, its sole general partner

By: _____
A. Boyd Simpson, President

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

HAMILTON COUNTY, TENNESSEE

By: _____
County Mayor

WILLIAM F. HULLANDER

By: _____
Hamilton County Trustee

WILLIAM C. BENNETT

By: _____
Hamilton County Assessor of Property

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

REAL PROPERTY

Lot One (1), Trafalgar on Market, as shown by plat of record in Plat Book 88, Page 172, in the Register’s Office of Hamilton County, Tennessee.

Together with the appurtenant non-exclusive right to the use of the alleys leading to and from Lot One (1) and the western line of Cherry Street as shown on plat of record in Plat Book 88, Page 172, in the Register’s Office of Hamilton County, Tennessee.

Reference for prior title is made to Deed recorded in Book 10466, Page 788, in the Register’s Office of Hamilton County, Tennessee.

PERSONAL PROPERTY

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

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

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered as of this _____, 2015, by and between **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE** (the “Board”), a public corporation duly created and existing under the laws of the State of Tennessee, and **TSO CHATTANOOGA DEVELOPMENT, LP** (the “Company”), a Georgia limited partnership.

WITNESSETH:

In consideration of the respective covenants and agreements hereinafter contained, the Board and the Company agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.01. Definitions. The following terms when used in this Agreement, unless the context shall clearly indicate another or different meaning or intent, shall be construed as follows:

“Act” means Chapter 333 of the Public Acts of 1969, as codified in Tennessee Code Annotated Sections 48-101-301 et seq., as heretofore amended and as hereafter amended from time to time.

“Act of Bankruptcy” means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceeding) by or against the Company or the Board under any applicable bankruptcy, insolvency or similar law as now or hereafter in effect.

“Agreement” means this Lease Agreement as it now exists and as it may hereafter be amended.

“Board” means The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, a public corporation duly created and existing under the Act, and its successors and assigns.

“City” means the City of Chattanooga, Tennessee.

“County” means Hamilton County, Tennessee.

The terms “default” and “event of default” mean any occurrence or event specified in Section 10.01 hereof.

The term “pending” with respect to any proceedings commenced by an Act of Bankruptcy means that such proceedings have not been dismissed, or are subject to further appeal.

“PILOT Agreement” means the Agreement for Payments in Lieu of Ad Valorem Taxes entered into by and among the Board, the Company, the City and the County.

“Project” means the multi-family rental housing project located on the Property.

“Property” means the real and personal property located at 728 Market Street more particularly described in **Exhibit “A”** attached hereto, together with additions thereto, replacements thereof and substitutions therefor.

ARTICLE II.

CERTIFICATIONS

Section 2.01. Certifications by Board. The Board makes the following certifications as the basis for the undertakings on its part herein contained:

(a) The Board is a public corporation of the State of Tennessee, duly organized and existing under the provisions of the Act. The Act authorizes the Board to acquire real and personal property constituting a “Project” under the Act.

(b) The Board has found and does hereby declare that the Project constitutes “multi-family housing facilities” qualifying as a “Project” under the Act and that the acquisition of the Project and the leasing of the same to the Company will be in furtherance of the public purposes for which the Board was created.

(c) The Board has been induced to enter into this undertaking by the promise of the Company to operate a housing facility in the State of Tennessee.

(d) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Board threatened, against or affecting the Board in any court or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially and adversely affecting the transactions contemplated by this Agreement or which, in any way, would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument to which the Board is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.

Section 2.02. Certifications by Company. The Company makes the following certifications as the basis for the undertakings on its part herein contained:

(a) The Company is limited liability company duly formed under the laws of the State of Georgia, is in good standing under Tennessee law, has full power and authority to enter into this Agreement and to perform all obligations contained herein and therein, and has, by proper action, been duly authorized to execute and deliver this Agreement and, when executed and delivered by the parties thereto, this Agreement will constitute the valid and binding obligation of the Company enforceable in accordance with its terms.

(b) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated herein by the Company, nor the fulfillment of or compliance with the terms and conditions of this Agreement, does or will conflict with or result in a breach of the terms, conditions or provisions of any restriction or internal governing document of the Company or any agreement or instrument to which the Company is now a party or by which it is bound, or any existing law, rule, regulation, judgment, order or decree to which it is subject, or constitutes a default under any of the foregoing or, except as contemplated hereby, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement.

(c) There are no proceedings pending, or to the knowledge of the Company threatened, against or affecting the Company in any court or before any governmental authority, arbitration board or tribunal which involve the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of the Company, or the ability of the Company to perform its obligations under this Agreement. The Company is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(d) No event has occurred and no condition exists with respect to the Company that would constitute an “event of default” under this Agreement, or which, with the lapse of time or with the giving of notice, or both, would become such an “event of default.”

ARTICLE III.

LEASING CLAUSES; WARRANTY OF TITLE

Section 3.01. Lease of Property. The Board hereby leases to the Company, and the Company hereby leases from the Board, the Property, for the consideration set forth in Section 5.3 hereof and in accordance with the provisions of this Agreement.

Section 3.02. Title. The Board will obtain upon the acquisition thereof good and marketable title to the Property, free from all encumbrances.

Section 3.03. Quiet Enjoyment. The Board covenants and agrees that it will warrant and defend the Company in the quiet enjoyment and peaceable possession of the Property, free from all claims of all persons whatsoever, throughout the Lease Term, so long as the Company shall perform the covenants, conditions and agreements to be performed by it hereunder, or so long as the period for remedying any default in such performance shall not have expired. If the Board shall at any time be called upon to defend the title to said property as aforesaid, it shall not be

required to incur any costs or expenses in connection therewith unless indemnified to its satisfaction against all such costs and expenses.

ARTICLE IV.

ACQUISITION, CONSTRUCTION AND INSTALLATION OF PROPERTY

Section 4.01. Agreement to Acquire, Construct and Install Project. The Company agrees that: It will cause title in and to the Property to be vested in the Board by quitclaim deed.

(a) It will acquire, construct and install the Project in the name of and on behalf of the Board.

(b) It will complete the acquisition, construction and equipping of the Project as promptly as practicable.

ARTICLE V.

EFFECTIVE DATE; DURATION OF LEASE TERM; CONSIDERATION

Section 5.01. Effective Date of this Agreement; Duration of Lease Term. This Agreement shall become effective upon its delivery, and the leasehold estate created hereunder shall then begin, and, subject to the other provisions of this Agreement, shall expire at midnight, December 31, 2031.

Section 5.02. Delivery and Acceptance of Possession. The Board agrees to deliver to the Company sole and exclusive possession of the Project, and the Company agrees to accept possession of the Project upon such delivery.

Section 5.03. Consideration for Lease. In consideration of the lease granted hereunder the Company agrees to hereof;

(a) Acquire, construct and install the Project as described in Section 4.01 hereof;

(b) Operate the Project as a mixed use facility, including a multi-family housing facility for its own benefit and for the benefit of the citizens of the County and the City; and

(c) Make the payments required of it under the PILOT Agreement.

ARTICLE VI.

MAINTENANCE: MODIFICATION: TAXES AND INSURANCE

Section 6.01. Maintenance and Modification of Property by Company. The Company agrees that throughout the term of this Agreement it will, at its own expense, keep the Property in as reasonably safe condition as its operations shall permit, and (ii) in good repair and in good operating condition, normal wear and tear and obsolescence excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.

Section 6.02. Removal of Personal Property Included in Project. The Board shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary personal property constituting a part of the Project. In any instance where the Company in its sole discretion determines that any items of such personal property have become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Company may remove such items of personal property and (on behalf of the Board) sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the Board therefor.

Section 6.03. Taxes, Other Governmental Charges and Utility Charges. The Board and the Company acknowledge that under present law the Project will be exempt from taxation in the State of Tennessee. The Company will pay, as the same become lawfully due and payable, (i) all taxes and governmental charges of any kind whatsoever upon or with respect to the Project and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project.

The Company may, at its own expense and in its own name, in good faith contest any such taxes, assessments or other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. The Board will cooperate fully with the Company in any such contest.

Section 6.04. Maintenance of Insurance. Throughout the term of this Agreement, the Company shall keep the Property continuously insured against such risks as are customarily insured against with respect to property similar to the Property by businesses of like size and type (other than business interruption insurance), paying as the same become due all premiums in respect thereto.

Section 6.05. Indemnification of Board. The Company shall and hereby agrees to indemnify and save the Board and its officers, directors, agents, servants and employees harmless from and against all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Property during the term of this Agreement, and against and from all claims arising during the term of this Agreement, from

- (a) any condition of the Property caused by the Company;

(b) any breach or default on the part of the Company in the performance of any its obligations under this Agreement; and

(c) any act of negligence of the Company or of any agents, contractors, servants, employees or licensees of the Company or of any assignee or sublessee of the Company.

The Company shall indemnify and save the Board and its officers, directors, agents, servants and employees harmless from and against all costs and expenses incurred in or in connection with any action or proceeding brought thereon, and, upon notice from the Board, the Company shall defend the Board and any such officer, director, agent, servant or employee or any of them in any such action or proceeding.

Section 6.06. Board Expenses. In addition to other payments required to be made by the Company hereunder, the Company shall pay any reasonable expenses not specifically mentioned herein which are incurred by the Board in connection with the Property or this Agreement.

Section 6.07. Depreciation and Investment Credit. The Board covenants and agrees that depreciation expenses and investment tax credit, if any, with respect to the Project shall be made available to the Company, and the Board will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation expenses or investment tax credit, but the Board shall have no responsibility or liability for failure of the Company to receive any such expenses or credits.

ARTICLE VII.

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.01. Damage and Destruction. If during the term hereof the Property is damaged by fire or other casualty, the Board shall cause the proceeds received by it from insurance to be paid to the Company for application in one or both of the following ways, as shall be determined by the Company:

- (a) Repair, rebuilding or restoration of the property damaged.
- (b) Reimbursement to the Company for loss in value of its interest in the Property.

Section 7.02. Condemnation of Property. If title in and to, or the temporary use of, the Property or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Board shall cause the proceeds received by it from any award made in such eminent domain proceeding to be paid to the Company for application in one or more of the following ways, as shall be determined by the Company:

(a) Restoration of the Property to substantially the same condition as existed prior to the exercise of said power of eminent domain.

(b) Acquisition, by construction or otherwise, of other property having substantially the same use and utility as the property taken in such proceedings (which property will be deemed a part of the Property available for use by the Company under this Agreement).

(c) Reimbursement to the Company for loss in value of its interest in the Property.

The Board shall cooperate fully with the Company in the handling and conduct of any prospective or pending eminent domain proceeding with respect to the Property or any part thereof and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the Board. In no event will the Board voluntarily settle, or consent to the settlement of, any prospective or pending eminent domain proceeding with respect to the Property or any part thereof without the written consent of the Company.

ARTICLE VIII.

SPECIAL COVENANTS

Section 8.01. No Warranty of Condition or Suitability by Board. The Board makes no warranty, either express or implied, as to the condition of the Property or that it will be suitable for the purposes or needs of the Company. The Company releases the Board from, agrees that the Board shall not be liable for, and agrees to hold the Board and its officers, directors, agents, servants and employees harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Property or the use thereof. The members of the Board of Directors of the Board shall incur no liability either individually or collectively by reason of the obligations undertaken by the Board hereunder.

Section 8.02. Identification of Personal Property Included in Project. The Company will at all times maintain in its permanent records a complete list of the personal property constituting a part of the Project, which will specifically identify each item of such personal property as being property of the Board.

ARTICLE IX.

ASSIGNMENT, SUBLEASING, DEVELOPMENT AND SELLING

Section 9.01. Assignment. This Agreement may be only assigned, as a whole or in part, by the Company without the prior written consent of the Board if:

(a) The Company is permitted to assign the PILOT Agreement in accordance with its terms as set forth in Paragraph 15 of the PILOT Agreement;

(b) The assignee shall assume all obligations of the Company hereunder to the extent of the interest assigned and shall provide documentation and information to the Board, as required under Paragraph 15 of the PILOT Agreement; and

(c) The Company and/or assignee shall, within thirty (30) days after the execution and delivery thereof, furnish or cause to be furnished to the Board a true and complete copy of each such assignment and assumption of obligation, as the case may be.

Upon satisfaction of the requirements of this Section, the assignment shall relieve the Company from further liability for any of its obligations hereunder as of the effective date of the assignment.

Section 9.02. Subleasing. The Company may sublease all or a portion of the Property without the prior written consent of the Board; provided that any such sublease shall not relieve the Company from its obligations under this Agreement or the PILOT Agreement, and such obligations shall remain in full force and effect.

Section 9.03. Financing Approvals and Consents. The Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the Board, in consummating any financing related to the Project, the Property or other improvements on the Property. Without limitation of the foregoing, the Chairman of the Board, or the Chairman's designee, shall, upon the Company's request, enter into or consent to such documents as are necessary to consummate such financing including, without limitation, encumbering the Board's fee interest in the Property and the Project to deeds of trust, estoppel certificates, subordination and non-disturbance agreements, affidavits and certificates, provided that any such documents are expressly non-recourse to the Board beyond its interest in the Property. Any such document shall further be subject to the provisions of Section 8.01 with respect to the immunities provided to members of the Board.

Section 9.04. Cooperation. The Board shall cooperate with the Company, to the extent reasonable and at no additional cost to the Board, in connection with development approvals and requirements and related activities for the Project and the development of the Property. Without limitation of the foregoing, the Chairman of the Board, or the Chairman's designee, may, upon the Company's request, execute zoning, rezoning and variance applications and any subdivision plats, easements or other documents as may be required or useful in connection with the Project or the development of the Property, provided that any such documents are expressly non-recourse to the Board beyond its interest in the Property. Any such document shall further be subject to the provisions of Section 8.01 with respect to the immunities provided to members of the Board.

Section 9.05. Restrictions on Sale of Property by Board. The Board agrees that, except for transactions effected in accordance with Section 11.03 hereof and except as requested by the Company, it will not sell, assign, mortgage, transfer or convey the Property during the Lease

Term or create or suffer to be created any debt, lien or charge on the rents, revenues or receipts arising out of or in connection with its ownership of the Property, and it will not take any other action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes; provided, that if the laws of the State of Tennessee at the time shall permit, nothing contained in this Section shall prevent the consolidation of the Board with, or merger into, or transfer of the Property as an entirety to, any public corporation whose property and income are not subject to taxation and which has corporate authority to carry on the business of owning, leasing and selling of the Property; provided that such consolidation, merger or transfer shall be authorized by the governing body of the State of Tennessee.

ARTICLE X.

EVENTS OF DEFAULT AND REMEDIES

Section 10.01. Events of Default Defined. The following shall be “events of default” under this Agreement, and the terms “event of default” or “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure by the Board or the Company to observe and perform any covenant, condition or agreement on its part to be observed or performed, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to one party by the other, unless the one giving notice shall agree in writing to an extension of such time prior to its expiration. If a failure under this Section 10.01(a) is such that it can be corrected but not within the applicable period, it shall not constitute an event of default if appropriate corrective action is instituted within the applicable period and diligently pursued until the default is corrected.

(b) A voluntary Act of Bankruptcy or an Act of Bankruptcy which, if resulting from the filing or commencement of involuntary proceedings against the Company or the Board, is not dismissed or discharged within sixty (60) days of the filing or commencement thereof.

The foregoing provisions of subsection (a) of this Section are subject to the following limitations: if by reasons of force majeure, the Board or the Company is unable in whole or in part to carry out the agreements on its part herein referred to, the failure to perform such agreements due to such inability shall not constitute an event of default nor shall it become an event of default upon appropriate notification or the passage of this stated period of time. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; acts of terrorism; orders of any kind of the government of the United States of America or of the State of Tennessee or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires, hurricanes, tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Board or the Company. The Board and the Company agree, however, to remedy

with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Board or the Company, as the case may be and the Board and the Company shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Board or the Company, unfavorable to it.

Section 10.02. Remedies on Default. Whenever any event of default referred to in Section 10.01 hereof shall have occurred and be subsisting, the Board or the Company, as the case may be, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant under this Agreement including, without limitation, termination of this Agreement.

ARTICLE XI.

OPTIONS IN FAVOR OF COMPANY

Section 11.01. Options to Terminate. The Company shall have the following options to cancel or terminate the term of this Agreement:

(a) At any time, the Company may terminate the Lease Term by giving written notice to the Board of such termination.

(b) At any time, the Company may terminate this Agreement as to a part of the Property by giving written notice to the Board of such termination, and such termination shall forthwith become effective as to that part of the Property.

Section 11.02. Option to Purchase Property. Upon termination or expiration of the Lease Term or termination of this Agreement as to a part of the Property, the Company shall have, and is hereby granted, the option to purchase the Property or that part of the Property as to which the Agreement has been terminated, as the case may be, for the purchase price, in each case, of One Dollar (\$1.00). This option may be exercised whether or not the Company is in default hereunder.

Section 11.03. Conveyance on Exercise of Option. Upon exercise of the option granted above, the Board will, upon receipt of the purchase price, deliver to the Company documents conveying to the Company title to the Property or part of the Property, as the case shall be, by appropriate deeds and bills of sale, subject only to

(a) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the Board;

(b) those liens and encumbrances created by or with the consent of the Company; and

(c) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agreement.

ARTICLE XII.

MISCELLANEOUS

Section 12.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by first class United States mail, postage prepaid, or sent by facsimile addressed as follows:

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

Company: Mr. A. Boyd Simpson
TSO Chattanooga Development, LP
1401 Peachtree Street, Suite 400
Atlanta, Georgia 30309

Any such person may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communication shall be sent.

Section 12.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Company, the Board, and their respective successors and assigns.

Section 12.03. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.04. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.05. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope, extent or intent of any provision or Section hereof.

Section 12.06. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Tennessee.

[Signature Page Follows]

IN WITNESS WHEREOF, the Board and the Company have caused this Agreement to be duly executed in their respective corporate names, all as of the date first above written.

ATTEST:

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

By: _____
Secretary

By: _____
Chairman

TSO CHATTANOOGA DEVELOPMENT, LP,
a Georgia limited partnership,
By: CHATTANOOGA DEVELOPMENT
GENERAL PARTNER, LP,
a Georgia limited partnership,
its sole general partner,
By: TSO CHATTANOOGA GP SPE, INC.,
a Delaware corporation, its sole general partner

By: _____
A. Boyd Simpson, President

STATE OF TENNESSEE
COUNTY OF HAMILTON

Personally appeared before me, _____, Notary Public, _____ and _____, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained, and who further acknowledged that they are the Chairman and Secretary of the Maker, THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, and are authorized by the Maker to execute this instrument on behalf of the Maker.

WITNESS my hand, at office, this _____ day of _____, 2015.

Notary Public

My Commission Expires:

[Affix Notary Seal]

STATE OF _____)
COUNTY OF _____)

Before me, _____, of the state and county aforesaid, personally appeared A Boyd Simpson, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be President of TSO Chattanooga GP SPE, Inc., which is the general partner of Chattanooga Development General Partner, LP, which is the general partner of TSO CHATTANOOGA DEVELOPMENT, LP, the within named bargainor, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by personally signing the name of the general partners by himself as such officer on behalf of the within named bargainor.

WITNESS my hand and seal at office in _____, _____
_____ this _____ day of _____, 2015.

Notary Public

My commission expires:

[Affix Notary Seal]

EXHIBIT “A” TO LEASE

REAL PROPERTY

Lot One (1), Trafalgar on Market, as shown by plat of record in Plat Book 88, Page 172, in the Register’s Office of Hamilton County, Tennessee.

Together with the appurtenant non-exclusive right to the use of the alleys leading to and from Lot One (1) and the western line of Cherry Street as shown on plat of record in Plat Book 88, Page 172, in the Register’s Office of Hamilton County, Tennessee.

Reference for prior title is made to Deed recorded in Book 10466, Page 788, in the Register’s Office of Hamilton County, Tennessee.

PERSONAL PROPERTY

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