

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

IN RE:	)	Judge Harrison
	)	
AVONDALE PARK APARTMENTS,	)	Case No. 15-bk-3468
	)	
Debtor.	)	Chapter 11

**DISCLOSURE STATEMENT TO ACCOMPANY  
DEBTOR'S SECOND PLAN OF REORGANIZATION**

Avondale Park Apartments ("Avondale" or the "Debtor"), the debtor in the above-referenced bankruptcy, respectfully submits this Disclosure Statement (the "Disclosure Statement") for use in soliciting acceptances of its Second Plan of Reorganization (the "Plan"). All capitalized terms are defined in the Debtor's Plan of Reorganization, accompanied herewith.

**INTRODUCTION**

Avondale is a partnership owned by Elaina Vanders Johnson and her estranged husband, Rufus Slayden Johnson, III. Avondale's exclusive asset is a 110-unit apartment building in Clarksville, Tennessee. Mr. and Ms. Johnson are also partners in Hidden Valley Apartments ("Hidden Valley"), a partnership whose exclusive asset is an 80-unit apartment building in Pulaski, Tennessee. On May 20, 2015, the Debtor and Hidden Valley each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (Case Nos. 15-bk-2468 and 15-bk-2469, respectively). On September 9, 2015, this Court entered an order compelling the joint administration of this case and the Hidden Valley case.

Since the filing of its petition, the Debtor has remained in possession of its property and operated its affairs as Debtor-in-Possession. No Trustee has been appointed, nor has a committee of unsecured creditors been appointed, in either case.

The Debtor's case is simple. It has one asset—the apartment complex in Clarksville, Tennessee. Other than certain taxing authorities, the Debtor has one secured creditor, and very few unsecured creditors. The Debtor also has substantial equity in its apartment building (the “Avondale Property”).

The main secured creditor of the Debtor during this case was U.S. Bank National Association (“U.S. Bank”). U.S. Bank was the exclusive lender on the Avondale Property. And U.S. Bank had previously objected to the Debtor's prior efforts to confirm a plan. But on May 6, 2016, the Debtor, U.S. Bank, and ACM Satilla LV VI LLC and its related entities (collectively, “Satilla”) entered into a settlement agreement and refinance transaction whereby Satilla purchased U.S. Bank's secured debt on the Avondale Property. On that same day, this Court entered (a) an order approving the settlement agreement that authorized this refinancing and (b) an order authorizing the Debtors to incur post-petition debt under 11 U.S.C. § 364 to effect the settlement agreement and refinance transaction. Pursuant to that settlement agreement, Satilla has agreed to certain treatment under the Plan. Accordingly, the Debtor presents this Disclosure Statement to accompany its Plan and to respectfully request approval thereof.

The purpose of a disclosure statement is to provide the holders of Claims against, and Interests in, a debtor with adequate information about the debtor and its assets and debts sufficient to enable such holders to make an informed judgment about the merits of approving a plan.

This Disclosure Statement is intended to contain “adequate information” (as defined in 11 U.S.C. § 1125(a)) of a kind, and in sufficient detail, that would enable a hypothetical investor typical of the holders of Claims or Interests in the case to make an informed judgment in voting to accept or reject the Plan. Approval of this Disclosure Statement by the Court does not constitute a

recommendation to accept or reject the Plan.

Article I of the Plan contains definitions of certain terms. Where those terms are capitalized in this Disclosure Statement, they have the meaning set forth in Article I of the Plan.

### **DISCLAIMER**

No representations concerning the Debtor, other than as set forth in this Disclosure Statement, are authorized by the Debtor. Any representations or inducements made to secure your acceptance that are other than as contained in this Disclosure Statement should not be relied upon by you in arriving at your decision.

The information contained in this Disclosure Statement has been primarily derived from the Debtor. The Debtor believes the information to be correct; however, the information has not been independently verified in every instance, nor has it been subjected to a certified audit.

### **TAX CONSEQUENCES**

Section 1125(a)(1) of the Bankruptcy Code requires the Debtor to include a discussion of any potential material federal tax consequences of the Plan. Creditors and equity interest holders concerned with how the Plan may affect their tax liability should consult with their accountants, attorneys, or advisors. A tax consequence of the Chapter 11 filing is that the Debtor is entitled to exclude from gross income any cancellation of debt resulting from this Plan. The Debtor is not aware of any potential material federal tax consequences to it or a hypothetical investor.

### **THE DEBTOR**

#### **A. Profile of the Debtor.**

The Debtor is a general partnership that owns a 110-unit multi-family apartment complex located at 1351 Avondale Drive, Clarksville, Tennessee. Elaina Vanders Johnson is the managing

general partner of the Debtor and holds a 90% ownership interest in it. Rufus Slayden Johnson, III owns the remaining 10% of the Debtor.

**B. History of the Debtor.**

The Debtor managed its own affairs prior to the bankruptcy and will continue to manage its affairs after the bankruptcy. The managing partner of the Debtor, Elaina Vanders Johnson, oversees the day-to-day operations of the Hidden Valley Property, as well as the Debtor's books and records. Ms. Johnson has almost twenty years of property management experience for multi-family residential properties throughout the state of Tennessee.

**C. Events Leading to Chapter 11 Filings.**

The Debtor has positive cash flow and substantial equity in the Avondale Property. But during the winter of 2014-2015, the Avondale Property began incurring significant water bills. These bills ranged from \$10,000 to \$30,000, far above what was typical for the Avondale Property during the winter. Some of these excess costs were caused by ruptured pipes, which occurred because of an unusually cold winter. This required substantial repair costs which impacted the Debtor's operating budgets.

Due to these unforeseen expenses, the Debtor was unable to timely pay the real property taxes for the Avondale Property. This triggered a default on the Debtor's loan with U.S. Bank, which was secured by the Avondale Property. U.S. Bank then threatened a foreclosure, so the Debtor filed this bankruptcy case to avoid the foreclosure and restructure its debts.

**D. Significant Events During the Bankruptcy**

1. An order ordering the joint administration of this case with the Hidden Valley case was entered on September 9, 2015. In this order, the Court instructed all future filings for either case

to be made in this case's docket.

2. On January 4, 2016, U.S. Bank filed a Notice of Transfer of Claim under Fed. R. Bankr. P. 3001(e)(2) to notify the Court of its purchase of Claim No. 8, an unsecured claim for \$9,986.75 of Pinnacle Pollution Control Services, LLC.

3. On March 17, 2016, this Court entered an agreed order submitted by the Debtor and Hidden Valley (collectively, the "Debtors") and U.S. Bank resolving U.S. Bank's pending motion for stay relief. This Order authorized the Debtors to refinance the U.S. Bank claims secured by the Avondale Property and the apartment complex owned by Hidden Valley located at 945 Cleveland Street, Pulaski, Tennessee (the "Hidden Valley Property" and collectively with the Avondale Property, the "Properties") on or before March 28, 2016. If the Debtors were unable to obtain financing, U.S. Bank would be automatically entitled to relief from the automatic stay to proceed against the Properties, which was collateralized with the Avondale Property to secure the U.S. Bank debt.

4. When the Debtors were unable to obtain financing by U.S. Bank's deadline, U.S. Bank obtained stay relief, noticed a foreclosure sale on the Properties, and moved to appoint a receiver for the Properties in state court. The sale was set for May 9, 2016.

5. On May 6, 2016, after extensive negotiations between the Debtors, U.S. Bank, and Satilla, the three parties agreed to a refinance transaction whereby Satilla would acquire all of U.S. Bank's secured and unsecured claims in these bankruptcy cases and agree to certain agreed-upon plan treatment as provided in the Plan and described in this Disclosure Statement.

6. The Debtors are not involved in any other non-bankruptcy legal proceedings.

7. The Debtor does not presently assert that there have been no preferential or fraudulent

transfers in this case, though it retains the right to later assert and litigate such transfers as provided in Section 8 of the Plan.

## **FINANCIAL CONDITION OF THE DEBTOR**

### **A. Post-Petition Operations**

Both of the Debtors have remained Debtors-In-Possession and in control of their affairs since the Petition Date. There has been no examiner, restructuring officer, or other professional appointed to control the Debtors' affairs. It has been "business as usual" since the Petition Date.

The Debtors have filed all monthly operating reports, which are available electronically to any party in interest. These reports indicate the positive cash flow of the Properties relative to the costs and expenses related to the Properties and the debt service obligations under the Plan.

### **B. Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets are listed in Exhibit A. Please also refer to the Debtor's financial history set forth in the monthly operating reports, which are summarized in Exhibit B. Based on this operating history, the Debtor anticipates that it will be able to successfully complete its obligations under the Plan and that the Plan is feasible.

## **DEBTOR'S LIABILITIES**

### **A. Post-Petition Administrative Expense Claims**

Administrative expense claims include the actual, necessary costs and expenses associated with preserving the Debtors' bankruptcy estate. These claims are more fully set forth in 11 U.S.C. § 503, and are accorded priority under 11 U.S.C. § 507. The administrative claims in this case are as follows:

1. United States Trustee Quarterly Fees. The Debtors are current, and will

remain current, with payments to the United States Trustee through the entry of a final decree closing the bankruptcy case.

2. Payments to Professionals. The only professionals employed by the Debtor pursuant to 11 U.S.C. § 327 are counsel for the Debtor. On May 26, 2016, counsel for the Debtor submitted an application for fees and expenses of \$20,458.33 for all fees incurred on behalf of both the Debtor and Hidden Valley for the period beginning on April 13, 2016, the date that the Debtors' engaged current counsel, to May 16, 2016. No objections to this application have been asserted by any interested parties. The Debtor expects professional fees for the period between May 16, 2016 and the Effective Date to be less than \$25,000.00.

**B. Priority Claims**

1. Montgomery County Trustee. The Montgomery County Trustee asserts five secured, priority claims pursuant to 11 U.S.C. § 507(a)(8). These claims are as follows:

- a. \$48,389.00 for unpaid 2014 real property taxes. [Claim No. 1].
- b. \$2,301.44 for unpaid 2013 personal property taxes. [Claim No. 2].
- c. \$2,134.32 for unpaid 2014 personal property taxes. [Claim No. 3].
- d. \$2,399.00 for unpaid 2015 personal property taxes. [Claim No. 11].
- e. \$44,520.00 for unpaid 2015 real property taxes. [Claim No. 12].

For the purposes of the Plan, the Montgomery County Trustee's claim shall be deemed Allowed in the amount of \$99,743.76.

2. City of Clarksville. The City of Clarksville, Department of Finance and Revenue, asserts three secured, priority claims pursuant to 11 U.S.C. § 507(a)(8). These claims are as follows:

- a. \$919.92 for unpaid 2013 city personal property taxes. [Claim No. 4].
- b. \$864.30 for unpaid 2014 city personal property taxes. [Claim No. 5].
- c. \$19,518.78 for unpaid 2014 city real property taxes. [Claim No. 6].

For the purposes of the Plan, the City of Clarksville's claim shall be deemed Allowed in the amount of \$21,303.00.

### **C. Secured Claims**

1. Satilla Acquisition, LLC. Satilla Acquisition, LLC ("Satilla Acquisition") holds a secured claim in the amount of \$4,171,000.00, secured by a first priority lien on the Hidden Valley Property and the Avondale Property (the "Satilla Claim"). The Satilla Claim is the total amount owed to Satilla by the Debtor and Hidden Valley and arises from that certain *Combined Amended and Restated Promissory Note* and that certain *Promissory Note* executed by the Debtor and Hidden Valley in favor of Satilla on May 6, 2016 (collectively, the "Notes") as part of the global settlement agreement between the Debtors, U.S. Bank, and Satilla (the "Settlement Agreement"). As part of this Settlement Agreement, Satilla acquired all of U.S. Bank's claims in this case, including Claim Nos. 7, 8, and 9, though their exclusive claim against the Debtors is the amount set forth in the Notes pursuant to the Settlement Agreement. The Notes are secured on the Hidden Valley Property by a Deed of Trust of record at Volume 1394, Page 2404, Register of Deeds Office of Montgomery County, Tennessee, and as amended by that certain *First Amendment to Deed of Trust* executed as part of the global settlement agreement with U.S. Bank, Satilla, and the Debtors. The Notes are also secured on the Hidden Valley Property by a Deed of Trust of record at Book DT494, Page 516, Register of Deeds Office of Giles County, Tennessee, and as amended by that certain *First Amendment to Deed of Trust* executed as part of the global settlement agreement with U.S. Bank,



Satilla, and the Debtors.

**D. Unsecured Claims**

The Debtor has six general, non-priority unsecured claims totaling \$3,543.74. For the purposes of the Plan, these claims are considered Allowed in the amount of \$3,543.74. A breakdown of these claims is attached hereto as Exhibit D.

**SUMMARY OF THE PLAN**

**A. Classification of Claims and Interests**

The Claims of creditors and interests of equity security holders under the Plan are divided into the following classes:

- Class 1        *Administrative Claims*
- Class 2        *Priority Claims*
- Class 3        *Secured Claim of Satilla*
- Class 4        *General Unsecured Claims*
- Class 5        *Ownership Interests*

**B. Treatment of Claims**

Class 1 and Class 5 are unimpaired as determined pursuant to 11 U.S.C. § 1124. All other classes are impaired. The following is a summary of the treatment provided in the Plan to each Class of Claims and Interests:

1.     Class 1: Administrative Expense Claims.     Class 1 consists of Administrative Expense Claims that are deemed Allowed pursuant to 11 U.S.C. §§ 503 and 507(a)(2). Except for quarterly fees owed to the United States Trustee, which will be paid when due, the holders of Class 1 Allowed Claims shall be fully paid within 10 business days of the later of: (i) the entry and finality of

an order of the Court allowing such claim or (ii) the Effective Date of the Plan. The Debtor shall continue to make post-confirmation quarterly fee payments to the United States Trustee until entry of a Final Decree pursuant to 11 U.S.C. § 350. Any administrative claims representing a liability incurred in the ordinary course of the Debtor's business may be paid in cash after the Confirmation Date.

2. Class 2: Priority Claims: Class 2 consists of Allowed Unsecured Priority Claims that are deemed Allowed pursuant to 11 U.S.C. § 507, but which are not provided for as Class 1 Administrative Expense Claims. In this case, the only Class 2 Claims entitled to priority are certain city and county real and personal property tax claims that arise pursuant to 11 U.S.C. §507(a)(8). The claims include the Montgomery County Trustee's claims [Claim Nos. 1-3; 11-12] totaling \$99,743.76, and the City of Clarksville claims [Claim Nos. 4-6] totaling \$21,303.00. These Allowed Class 2 Claims shall be fully paid with interest at four percent (4%) per annum within five (5) years of the Petition Date, as required by 11 U.S.C. § 1129(a)(9)(c) in forty-five (45) equal monthly installments beginning on the first day of the first month following the Effective Date of the Plan, and continuing on the first day of each successive month until paid in full. With respect to the Montgomery County Trustee's claims, this results in payments of \$2,390.59 per month. With respect to the City of Clarksville claims, this results in payments of \$510.58 per month.

3. Class 3: Satilla Acquisition, LLC. The Class 3 Secured Claim of Satilla Acquisition shall be Allowed in the amount of \$4,171,000.<sup>1</sup> The Class 3 Claim will be treated and paid as an Allowed, Fully Secured Claim in accordance with the terms of the Notes and the related loan

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<sup>1</sup> This amount represents the total value of Satilla's secured claim against both Hidden Valley and the Debtor. This amount is cross-collateralized across the Hidden Valley Property and the Avondale Property. Reference is also made to this treatment in Hidden Valley's proposed Plan of Reorganization and Disclosure Statement, filed contemporaneously herewith.

documents as executed and/or amended pursuant to the Settlement Agreement (the “Loan Documents”), copies of which are attached hereto as Collective Exhibit C.

The rights of Satilla, including the security interests granted in the Loan Documents and the absolute assignment of rents made in the Loan Documents, shall continue with the same dignity, force and effect as existed prior to the commencement of this case, with no modification by this Plan or the Confirmation Order, except to the extent specifically provided in Collective Exhibit C. Thus, as security, Satilla shall retain all liens held as of the Petition Date by Satilla’s predecessor in interest, without the need for the execution of any new financing statements, security agreements, or deeds of trust; additionally, the Debtors shall cause to be pledged as additional collateral the sum of \$120,000.00 in cash or cash equivalents (collectively, the “Collateral”). Satilla shall retain its liens, claims and rights arising in or relating to its Collateral which have arisen after the filing of this case, including any post-petition rents and accounts receivable. The reorganized Debtor reaffirms, and to the extent necessary, re-assigns its rights under, that certain Absolute Assignment of Leases and Rents dated July 29, 2011 in Volume 1394, Page 2421 in the Office of the Register of Deeds of Montgomery County, Tennessee.

The Debtor may prepay some or all of the amounts due to Satilla without penalty.

The reorganized Debtor and any Guarantors under any of the Loan Documents waive any claims against Satilla Acquisition, LLC (or its assigns) that the Notes and Loan Documents contain any provisions which are unenforceable or contrary to law, including claims (a) that the Notes and Loan Documents constitute a novation; (b) that the Notes and Loan Documents violate any applicable state or federal law with respect to usury; and (c) that the Notes are subject to, governed by, or construed according to the laws of the state of Georgia (without regard to its conflict of law

principles), except to the extent preempted by applicable laws of the United States of America.

4. Class 4: Unsecured Claims. The Class 4 Claims shall consist of the Allowed General Unsecured Claims not entitled to priority and not expressly included in the definition of any other class. This Class includes, without limitation, Claims arising out of the rejection of any executory contract or unexpired lease, each Allowed Claim secured by a lien on property in which the Debtor has an interest to the extent that such Claim is determined to be unsecured pursuant to 11 U.S.C. § 506(a), and each such Claim of the class described in 11 U.S.C. § 507, to the extent that the Allowed amount of such Claim exceeds the amount which such Claim may be afforded priority thereunder. The Class 4 claims are described in attached Exhibit D.

The Class 4 Claims total \$3,543.74 and shall be allowed in the full amount asserted by the Class 4 Claimants. Commencing on the first day of the first month following the Effective Date of the Plan, the Class 4 Unsecured Claims shall be paid in full with zero percent (0%) interest by way of sixty (60) consecutive monthly installments of \$59.06. Each installment shall be due and payable on or before the first day of each month.

5. Class 5: Ownership Interests. The Class 5 Claims shall consist of the ownership interests of the Debtor. As set forth above, Elaina Vanders Johnson owns 90% of the Debtor, and her estranged husband, Rufus Slayden Johnson, III, owns the remaining 10%. Because the Plan proposes to pay all of the Debtor's creditors in full, the owners of the Debtor shall retain their respective ownership interests in the reorganized Debtor.

#### **SUMMARY OF OTHER PROVISIONS OF THE PLAN**

Legally Binding Effect. Confirmation of the Plan will bind the Debtor and all creditors and interest holders, whether or not they accept the Plan. The distributions of consideration provided for

in the Plan will be in exchange for and in complete settlement and satisfaction of all Claims and Interests, including any Claim for interest after the Petition Date. On the Confirmation Date, all creditors shall be precluded from asserting any Claim against the Debtor or its property based upon any transaction or other activity of any kind that occurred prior to the Confirmation Date.

Modification of the Plan. The Debtor may propose amendments to or modifications of the Plan at any time prior to the Confirmation Date provided that the amended Plan satisfies the requirements of the Code. If the circumstances warrant, after the Confirmation Date and before Substantial Consummation of the Plan, the Debtor may modify the Plan, provided that the Plan, as modified, meets the requirements of the Code, and the Court, after a hearing, confirms the Plan as modified. Unless, within the time fixed by the Court, a creditor changes its previous acceptance or rejection of the Plan, such previous election shall be deemed applicable to the amended Plan.

Plan Injunction. Except as otherwise expressly provided in, or permitted under, this Plan, the Confirmation Order shall provide, among other things, that all Creditors and persons who have held, hold or may hold Claims that existed prior to the Effective Date, are permanently enjoined on and after the Effective Date against the: (i) commencement or continuation of any judicial, administrative, or other action or proceeding against the Debtor or any of its owned entities on account of Claims against the Debtor, or on account of claims released pursuant to the Plan; (ii) enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order against the Debtor or any assets or property of same; or (iii) creation, perfection or enforcement of any encumbrance of any kind against the Debtor arising from a Claim. This provision does not enjoin the prosecution of any claims that arise on or after the Effective Date nor does it enjoin the determination in the Bankruptcy Court of the Allowed Amount of any Claims that arose

prior to the Effective Date. Parties asserting entitlement to payment of Administrative Expenses incurred Prior to the Confirmation Date and Holders of Claims shall be permanently enjoined from asserting any Claim against the Debtor or its retained assets based upon any act or omission, transaction or other activity that occurred prior to the Confirmation Date, except as otherwise provided in the Plan, whether or not a proof of claim or interest was filed and whether or not such Claim or Interest is allowed under Section 502 of the Bankruptcy Code.

Post-Confirmation Jurisdiction. The Court shall retain exclusive jurisdiction over this Chapter 11 case for the purpose of determining any matters pertaining to the Plan or the Confirmation Order, as well as determining all disputes, suits or controversies arising out of the Plan and its interpretation, enforcement or consummation. Persons reading this Disclosure Statement should refer to the Plan for a more detailed discussion of the Court's continuing jurisdiction over the Debtor and this case.

Post-Confirmation Reporting. Pursuant to Local Rules of Court, the reorganized Debtor shall file with the Court, within 30 days following the Effective Date of the Plan, a report of the action taken and progress made toward Plan consummation. The Debtor shall also file such a report by March 15 and September 15 of each year of the Plan until the case is closed. These reports will be on file with the Clerk of the Bankruptcy Court, Customs House, 701 Broadway, Nashville, Tennessee 37203.

Revesting of Property in the Debtor. Except as provided elsewhere in the Plan, the completion of the Plan Payments will revest all of the property of the estate in the Debtor.

## **LIQUIDATION ANALYSIS**

To obtain confirmation of the Plan, the Debtor must show that each holder of an impaired

Claim or interest has accepted the Plan, or that each holder will receive or retain under the Plan on account of the holder's Claim or interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount such holder would receive or retain if the Debtor's assets were liquidated under Chapter 7 of the Bankruptcy Code on said date.

The starting point in determining the amount which creditors of each class of unsecured claims and interest would receive in a Chapter 7 case under Bankruptcy Code, is to estimate the dollar amount that would be generated from the forced liquidation of the Debtor (the "Liquidation Proceeds").

The Liquidation Proceeds of the Debtor would consist of the proceeds from the sale of all of the assets of the Debtor, plus cash held by the Debtor and recoveries on any actions against other parties. The Liquidation Proceeds would first be used to pay allowed secured claims, then be reduced by the cost of the liquidation. Costs of liquidation of the Debtor would likely include the fees of the Chapter 7 Trustee, as well as those of counsel and other professionals that would be retained by the Trustee, actual selling expenses, any unpaid expenses incurred by the Debtor during its reorganization under this Chapter 11 (such as fees for attorneys and accountants), and any claims arising by reason of the Trustee's rejection of any contractual or lease obligations of the Debtor. These claims, and such other claims which are likely to arise during the liquidation process under Chapter 7, will result in a diminution of the Liquidation Proceeds available to pay unsecured creditors. The Debtor asserts that the present value of the distributions which could be anticipated from the net Liquidation Proceeds should be compared with the present value offered to each of the classes of unsecured claims and interests under the Plan.

The Debtor's Plan proposes to provide secured and unsecured creditors 100% of the value of

their claims. Because a creditor cannot receive more than it is owed, the payment of 100% of the claims necessarily provides each creditor with a return of at least what it would receive in a Chapter 7 case. This is demonstrated through an analysis of the Debtor's assets and liabilities:

<b>Current Assets</b>	
Cash on hand as of 5/1/16	\$41,627.62
Accounts Receivable as of 5/1/16 (Less allowance for doubtful accounts)	\$20,608.15
<b>Total Current Assets</b>	<b>\$62,235.77</b>
<b>Fixed Assets</b>	
Equipment and Tools	\$3,500.00
Real Property	\$3,836,500.00
<b>Total Fixed Assets</b>	<b>\$3,840,000.00</b>
<b>Other Assets</b>	
Customer lists	\$0.00
Other intangibles	\$0.00
<b>Total Other Assets</b>	<b>\$0.00</b>
<b>Total Assets at Liquidation Value</b>	<b>\$3,902,235.77</b>
Less secured creditor's recovery	\$2,733,910.74
Less Chapter 7 trustee fees and expenses	\$40,229.75
Less Chapter 11 administrative expenses	\$10,000.00
Less priority claims, excluding administrative expense claims	\$121,046.76
Less Debtor's claimed exemptions	\$0.00
Balance available to pay unsecured claims	\$997,048.52
Total amount of unsecured claims	\$3,543.74

The Plan therefore satisfies the requirement to provide creditors with distributions that are is not less than the amount such creditors would receive or retain if the Debtor's assets were liquidated



under Chapter 7. The Debtor submits that confirmation of the Plan is in the best interest of creditors and should be approved.

### **FEASIBILITY**

Another requirement for confirmation involves the feasibility of the Plan, which means that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or There are at least two important aspects of a feasibility analysis. The first aspect considers whether the Debtor will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses which are entitled to be paid on such date. The Debtor asserts that this aspect of feasibility is satisfied because it does not have any fees or expenses to be paid on the Effective Date other than any outstanding attorney's fees.

The second aspect of feasibility concerns whether the Debtor will have enough cash over the life of the Plan to make the required Plan payments. The Debtor has provided financial statements which demonstrate the historical and projected financial information. Please refer to the monthly operating reports filed in this case for the relevant financial statements, as well as Exhibit B to this Disclosure Statement. YOU ARE ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR FINANCIAL ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO THESE FINANCIAL STATEMENTS.

The Plan proposes to pay the Satilla Claim in the amount provided in the Loan Documents attached hereto as Collective Exhibit C. 2 This requires interest-only payments on the Notes until November 6, 2017, at which point the Notes underlying the Satilla Claim shall mature, and the entire

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<sup>2</sup> This amount includes the total to be paid to Satilla from both the Debtor's Plan and the Hidden Valley Plan.

principal balance shall be paid. The Debtor shall pay the claims in Class 2 and 4 as provided in this Disclosure Statement. As the Debtor's financial projections demonstrate, the Debtor's ability to make its required payments under this Plan are feasible.

Additionally, the Debtor has proposed a plan that retains the funds in the DIP account to help augment the required monthly payments in months where unexpected expenses, such as a failed heating and cooling unit or a plumbing issue, causes the operating budget to rise higher than anticipated. The Plan has been proposed in good faith and in amounts that will allow the Debtor to successfully complete the Plan based on anticipated income and expenses.

### **CONFIRMATION PROCEDURES**

The Plan cannot be consummated unless it is confirmed by the Court. Confirmation of the Plan requires that, among other things, either (i) each Class of Claims or Interests that is impaired by the Plan has voted to accept the Plan by the requisite majority, or (ii) the Plan is determined by the Court to be fair and equitable, as defined by the Bankruptcy Code, with respect to Classes of Claims or Interests that have rejected the Plan. The Bankruptcy Code also requires that the confirmation of the Plan be in the "best interests" of all holders of Claims and Interests. The Debtor believes that the Plan meets the Confirmation requirements of the Bankruptcy Code.

**Creditors Eligible to Vote.** Only the votes of Classes whose Claims or Interests are impaired by the Plan will be counted in connection with the Confirmation of the Plan. Generally, and subject to the specific provisions of § 1124 of the Bankruptcy Code, a Class is "impaired" if its legal, equitable or contractual rights attaching to the Claims or Interests of that Class are modified by the Plan. In determining acceptance of the Plan, votes will be counted only if submitted by a holder of an Allowed Claim or Allowed Interest. Claims or Interests may be Allowed by the Court for voting

purposes only. Classes 1 and 5 of the Plan include Claims or Interests that are not impaired under the Plan. All other Classes of Claims or Interests are impaired.

**Acceptance Necessary to Confirm the Plan.** For the Plan to be accepted and thereafter confirmed, it must be accepted by at least one Class of Claims which is impaired by the Plan. Under § 1126 of the Code, the impaired Class is deemed to have accepted the Plan if: (i) with respect to a Class of Claims, votes representing at least two-thirds ( $2/3$ ) in amount and more than one-half ( $1/2$ ) in number of Allowed Claims that have voted in that Class have accepted the Plan, and (ii) with respect to a Class of Interests, votes representing at least two-thirds ( $2/3$ ) in amount of those Allowed Interests that have voted have accepted the Plan; provided that the vote of any holder of an Allowed Claim or Allowed Interest whose acceptance or rejection of the Plan was not made in good faith, as determined by the Court, will not be counted.

If a Class of Claims has been impaired by the Plan, the impaired Class must accept the Plan. Otherwise, the Court, in order to confirm the Plan, must independently determine that the Plan provides to each holder of a Claim or Interest, as the case may be, of such Class a recovery which has a value, as of the Effective Date, at least equal to the value of the distribution which such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

**Manner of Voting.** In voting for or against the Plan, please use only the ballot sent to you with this Disclosure Statement. If a creditor has an Allowed Claim or Allowed Interest in more than one Class, such creditor may vote multiple ballots. Holders of Allowed Claims or Allowed Interests entitled to vote to accept or reject the Plan may vote by completing, dating, signing and transmitting the ballot to: Dunham Hildebrand, PLLC, 2510 Franklin Pike, Suite 210, Nashville, Tennessee,

37204, Email: griffin@dhnashville.com.

To be counted, a ballot must be received at the above address on or before the date and time set forth in the ballot. A ballot, once submitted, cannot be withdrawn or modified except as provided under the Bankruptcy Code. If a creditor fails to submit a ballot on or before the date set forth in the ballot, such creditor shall be deemed to have accepted the Plan.

**Confirmation Without Unanimous Acceptance.** Section 1129(b) of the Bankruptcy Code provides that the Plan may be confirmed by the Court despite not being accepted by every impaired Class if: (i) at least one impaired Class of Claims, excluding the Claims of insiders, has accepted the Plan; and (ii) the Court finds that the Plan does not discriminate unfairly and is fair and equitable to the rejected Classes. Among other things, such a finding would require a determination by the Court that the Plan provides that no holder of an Allowed Claim or Allowed Interest junior to the rejecting Class will receive or retain property or payment under the Plan until or unless such rejecting Class is paid in full.

The Debtor reserves the right pursuant to § 1129(b) of the Code to request the Court to confirm the Plan if all of the applicable requirements of § 1129(a) of the Code have been met. In addition, the Debtor reserves the right pursuant to § 1126(e) of the Code to request the Court to strike any ballot rejecting the Plan cast by any holder of a Claim or Interest which was not cast in good faith.

**Hearing on Confirmation of the Plan.** The Court will set a hearing on Confirmation of the Plan to determine whether the Plan has been accepted by the requisite number of holders of Claims and Interests and whether the other standards for Confirmation of the Plan have been satisfied. The hearing may be adjourned from time to time without further written notice other than an

announcement in open Court.

DATED: June 8, 2016

Respectfully Submitted,

**AVONDALE PARK APARTMENTS**

/s/ Elaina Vanders Johnson

By: Elaina Vanders Johnson

Its: Managing Partner

/s/ Ned Hildebrand

Griffin S. Dunham

Henry E. ("Ned") Hildebrand, IV

DUNHAM HILDEBRAND, PLLC

2510 Franklin Pike, Suite 210

Nashville, Tennessee 37204

615.933.5851

griffin@dhnnashville.com

ned@dhnnashville.com

*Attorney for Avondale Park Apartments*

# EXHIBIT A – LIST OF ALL ASSETS

Market Value	Secured Value	Equity	Description
\$3,836,500.00	\$2,733,910.74	\$1,102,589.26	Avondale Park Apartment Complex
\$41,627.62	\$0.00	\$41,627.62	Cash on Hand as of 5/1/16
			Accounts Receivable as of 5/1/16 (Less allowance for doubtful accounts)
\$20,608.15	\$0.00	\$20,608.15	
\$3,500.00	\$0.00	\$9,700.00	Tools and equipment
\$3,902,235.77	\$2,733,910.74	\$1,174,525.03	<b>Totals</b>

<b>Net Value of Estate</b>	\$1,174,525.03
Less Trustee Fees	\$40,229.75
Less Priority Creditors	\$121,046.76

<b>Amount Available to Unsecured Creditors</b>	\$1,013,248.52
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## EXHIBIT B – AVERAGE MONTHLY INCOME AND EXPENSES OF DEBTOR

	2/28/2016	3/31/2016	4/30/2016
<b>Income</b>	\$51,769.78	\$34,246.35	\$43,663.71
<b>Expense</b>	\$40,069.59	\$51,189.91	\$30,595.19
<b>Profit</b>	\$11,700.19	(\$16,943.56)	\$13,068.52

**EXHIBIT C – SATILLA LOAN DOCUMENTS**

**(See Loan Documents Attached Hereto)**



## EXHIBIT D – SUMMARY OF UNSECURED CLAIMS

<b>Class</b>	<b>Name</b>	<b>Insider</b>	<b>Impaired</b>	<b>Allowed Claim</b>
4	National Pen Company	N	Y	\$99.52
4	Orkin Pest Control	N	Y	\$855.00
4	Orkin Pest Control	N	Y	\$570.00
4	Residentcheck, Inc.	N	Y	\$471.00
4	Sherwin-Williams	N	Y	\$1,004.83
4	Waste Industries Branch 84	N	Y	\$543.39
<b>Total Amount for Class</b>				<b>\$3,543.74</b>

COMBINED AMENDED AND RESTATED PROMISSORY NOTES

Atlanta, Georgia  
May 6, 2016

\$4,120,000.00

**FOR VALUE RECIEVED, HIDDEN VALLEY APARTMENTS**, a Tennessee general partnership and **AVONDALE PARK APARTMENTS, GP** a Tennessee general partnership (collectively, "Borrower"), promise and agree to pay to the order of ACM Satilla LN VI LLC, a Delaware limited liability company, its successors, assigns or any subsequent holder of this Promissory Note ("Lender") at its offices in Atlanta, Georgia, or at such other place as may be designated in writing by Lender, in lawful money of the United States of America in immediately available funds, the principal sum of FOUR MILLION, ONE HUNDRED TWENTY THOUSAND FOUR AND 00/100 DOLLARS (\$4,120,000.00), together with interest thereon and other amounts due as provided below. This Note is an amendment and restatement of (a) that certain Promissory Note dated December 2, 2011 executed by Hidden Valley Apartments in favor of U.S. Bank National Association (the "Previous Lender") in the original principal amount of \$1,500,000.00; (b) that certain Promissory Note dated July 29, 2011 executed by Avondale Park Apartments G.P. in favor of the Previous Lender in the original principal amount of \$3,100,000.00, each of which was in turn endorsed to Lender, and includes in its principal balance certain expenses and advances made by the Previous Lender, including attorneys fees, costs of collection, and expenses incurred with respect to the bankruptcy cases of the Borrower. This Note shall mature on the earlier of (a) November 6, 2017 or (b) the date on which the principal amount of this Note has been declared or automatically has become due and payable (whether by acceleration or otherwise) (the "Maturity Date").

Advances hereunder shall be governed by that certain Loan Agreement, as amended between Borrower and Lender (as it may be modified, amended, or restated from time to time, the "Loan Agreement." *Any term not otherwise defined in this Note shall have the same meaning as in the Loan Agreement.* Reference is made to the Loan Agreement, which, among other things, provides for the acceleration of the maturity hereof upon the occurrence of certain events and for prepayments in certain circumstances and upon certain terms and conditions.

All advances hereunder shall bear interest from the date of such advance until such amount is due and payable (whether on any payment date, at maturity, by acceleration, or otherwise) at the "Effective Rate", which is defined as a fixed rate of interest equal to 9.50% per annum between May 1, 2016 and October 31, 2016; 10.50% per annum between November 1, 2016 and April 30, 2017; and 11.50% per annum from May 1, 2017 to maturity. Interest for each month shall be computed on the basis of a year of 360 days for the actual number of days elapsed.

This Note shall be repaid as follows:

- (a) commencing on the 30th day of May, 2016 and continuing on the 30th day of each consecutive month thereafter through and including October 30, 2016, Borrower shall pay to Lender payments of a partial amount of then accrued interest in an amount equal to interest at the rate of 6.5.% per annum; (b) commencing on the 30th day of November,

2016 and continuing on the 30th day of each consecutive month thereafter through and including April 30, 2017, Borrower shall pay to Lender payments of a partial amount of then accrued interest in an amount to equal to interest at the rate of 7.5% per annum; (c) commencing on the 30th day of May, 2017 and continuing on the 30th day of each consecutive month thereafter through and including October 30, 2017, Borrower shall pay to Lender payments of a partial amount of then accrued interest in an amount to equal interest at the rate of 8.5% per annum; and (d) on the Maturity Date, this Note shall mature and Borrower shall pay to Lender a balloon payment in an amount equal to all outstanding principal *plus* all then accrued interest *plus* all other payments due hereunder.

- (b) During the period from May 6, 2016 through May 6, 2017, the sum of \$120,000 of the outstanding principal balance shall not accrue interest. However, should the principal balance of this Note not be reduced by at least \$120,000 by May 6, 2017, then the entire outstanding principal balance shall accrue interest at the Effective Rate.
- (c) Provided that the Borrower is not otherwise in default hereunder, should the Borrower repay all amounts otherwise due under this Note on or before May 6, 2017, the requirement to pay the then accrued but unpaid interest shall be waived.

Upon the occurrence of an Event of Default under, and as defined in, the Loan Agreement, then, at the option of the Lender, the entire indebtedness hereby evidenced shall become due, payable and collectible then or thereafter, without notice, as Lender may elect regardless of the date of maturity.

Borrower shall pay a late charge equal to five percent (5%) of any payments of principal and/or interest that are paid more than ten (10) days after the due date thereof, to cover the extra expenses involved in handling delinquent payments (the "Late Charge"); provided that in no event shall the Late Charge result in the payment of interest in excess of the maximum rate or interest permitted by applicable law.

Subject to any applicable notice and cure periods, following the occurrence of any Event of Default, principal and unpaid interest shall bear interest (both before and after judgment) until paid at a rate of interest equal to the Default Rate (as defined in the Loan Agreement) ("Default Interest").

All amounts received for payment under this Note shall at the option of Lender be applied first to any unpaid expenses due Lender under this Note or under any other Loan Documents, then to the unpaid Late Charge, then to the unpaid Default Interest, then to all other accrued but unpaid interest due under this Note and finally to the reduction of outstanding principal due under this Note.

Time is of the essence of this Note. This Note is a secured promissory note.

Lender may waive any Event of Default before or after the same has been declared and restore this Note to full force and effect without impairing any rights hereunder, such right of waiver being a continuing one, but one waiver shall not imply any additional or subsequent waiver.

Lender and Borrower intend to conform strictly to applicable usury laws as presently in effect. Accordingly, Borrower and Lender agree that the sum of all consideration that constitutes interest under applicable law which is contracted for, charged, or received hereunder shall under no circumstance, including without limitation any circumstance in which the Note has been accelerated or prepaid, exceed the maximum lawful rate of interest permitted by applicable law. Any excess interest shall be credited on this Note or, if this Note shall have been paid in full, refunded to Borrower, by the holder hereof.

Borrower and any and all accommodation parties, endorsers, guarantors, general partners and other parties liable on the Note (collectively, the "Obligors"), jointly and severally waive presentment for payment, protest, notice of protest, notice of nonpayment of this Note, demand and all legal diligence in enforcing collection, and any discharge or defenses based on suretyship or impairment of collateral; and hereby expressly contest to (a) any and all delays, extensions, renewals or other modification of this Note or any waivers of any term hereof, (b) any release or discharge by Lender of any of the Obligors, (c) any release, substitution or exchange of any security for the payment hereof, (d) any failure to act on the part of Lender, and (e) any indulgence shown by Lender from time to time (without notice or further assent from any of the Obligors) and hereby agree that no such action, failure to act or failure to exercise any right or remedy by Lender shall in any way affect or impair the obligations of any of the Obligors.

This Note has been executed and delivered in, and shall be governed by and construed according to the laws of the State of Georgia (without regard to its conflict of law principles) except to the extent pre-empted by applicable laws of the United States of America. If any provision of this Note should for any reason be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect.

This Note may not be changed, extended or terminated except in writing signed by Borrower and Lender. No waiver of any term or provision hereof shall be valid unless in writing signed by Lender.

Borrower shall pay, on demand, all costs and expenses (including court costs, attorneys' fees and expenses) incurred by Lender in attempting to enforce or collect this Note, protect or enforce its rights under this Note or the Loan Agreement or protect or collect on any collateral or security for the payment of this Note.

**BORROWER AND LENDER (BY ITS ACCEPTANCE OF THIS NOTE), HEREBY KNOWINGLY, WILLINGLY AND IRREVOCABLY WAIVES ITS AND THEIR RIGHTS TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS NOTE OR ANY RELATIONSHIP BETWEEN LENDER AND BORROWER. BORROWER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS**

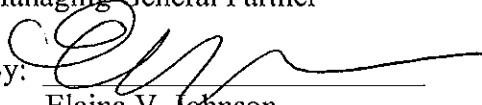
**FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS SECTION MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

Executed the date first written above.

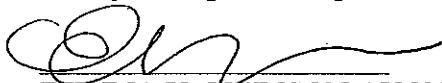
**BORROWERS:**

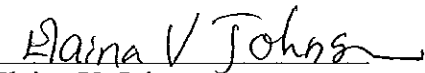
HIDDEN VALLEY APARTMENTS, GP  
a Tennessee general partnership

By: ELAINA V. JOHNSON HIDDEN  
VALLEY APTS, LLC  
Its: Managing General Partner

By:   
Elaina V. Johnson  
Its: Sole Member

AVONDALE PARK APARTMENTS,  
a Tennessee general partnership

By:   
ELAINA V. JOHNSON AVONDALE, LLC  
Its: Managing General Partner

By:   
Elaina V. Johnson  
Its: Sole Member

## **EXTENSION AND MODIFICATION AGREEMENT**

This Extension and Modification Agreement (this "Agreement") is executed this \_\_\_\_ day of May, 2016 (the "Effective Date"), by and between ACM Satilla LN VI LLC, a Delaware limited liability company (together with its predecessors in interest, the "Lender"), Avondale Park Apartments, a Tennessee general partnership ("Borrower") and Elaina V. Johnson ("Guarantor").

### **RECITALS:**

A. Lender is the holder of that certain Combined Amended and Restated Promissory Note executed by Borrower dated May 6, 2016 in the original principal amount of \$4,120,000.00, as thereafter amended from time to time, with a final maturity of November 6, 2017 (the "Note"), which was in turn an extension, modification and renewal of that of certain Promissory Note executed by Borrower, which was endorsed to Lender, of dated July 29, 2011 in the original principal amount of \$3,100,000.00 (the "Note Prior to Amendment").

B. The Note is further evidenced, governed and secured by various documents including that dated July 29, 2011 (the "Avondale Park Deed of Trust"), recorded on July 29, 2011, in Volume 1394, Page 2404 in the Office of the Register of Deeds of Montgomery County, Tennessee (the "MCRO"); that certain Absolute Assignment of Leases and Rents dated July 29, 2011 executed by Borrower, and of record at Volume 1394, Page 2421, MCRO (the "Assignment of Leases and Rents"); that certain Assignment and Security Agreement dated July 29, 2011 and executed by Borrower and Lender (the "Security Agreement"); that certain Loan Agreement dated July 29, 2011 (the "Loan Agreement"); and that certain Commercial Guaranty executed by Guarantor on or about July 29, 2011 (the "Guaranty").

C. The Borrower has requested that Lender modify the terms of the Loan, including extending the maturity date of the Loan, under the terms and conditions set forth in this Agreement.

D. Lender is willing to modify the terms of the Loan, provided that Lender receive certain assurances and agreements from the Borrower and Guarantor, as further set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. As used below in this Agreement, (i) terms defined in the preamble and recitals above shall have the meanings herein set forth, (ii) the following capitalized terms have the meanings assigned below, and (iii) capitalized terms used, but not defined, herein shall have the same meanings attributed to them in the respective Loan Documents:

“Affiliate” means, with respect to any Person, another Person who (i) owns an equity interest in the first Person, of any degree, (ii) in owned, as to equity interest, by the first Person, in any degree, (iii) Controls the first Person, (iv) is Controlled by the first Person, or (v) is Controlled by a Person who also Controls the first Person.

“Borrower Parties” means (i) Borrower, its respective predecessors, successors and assigns, (ii) Guarantor; (ii) and the respective present and previous agents, attorneys, representatives, Affiliates, officers, and directors of Borrower and/or Guarantor.

“Claims” means any and all accounts, covenants, agreements, obligations, claims, debts, liabilities, offsets, demands, costs, expenses, actions, or causes of action of every nature, character, and description, whether arising at law or equity or under statute, regulation, or otherwise, and whether liquidated or unliquidated, contingent or noncontingent, known or unknown, suspected or unsuspected.

“Control” means the ability to substantially direct the policies of a Person, whether directly or indirectly, and whether such influence exists by right or by economic compulsion.

“Lender Parties” means Lender, its participants, predecessors, successors and assigns and their present and previous agents, attorneys, accountants, consultants, representatives, Affiliates, officers, directors, employees, and each of them.

“Person” means any natural person and any legal entity with the ability to enter into contracts.

2. Principal Balance. As of May 6, 2016, Borrower and Guarantor agree that the current outstanding balance of the Combined Amended and Restated Note is \$4,120,000.00 (inclusive of all accrued interest, charges, fees or expenses payable in connection with the Loan; with such items, the “Indebtedness”).

3. Payments. Lender shall agree to accept and Borrower shall continue to make payments, at the rates and in the amounts set forth in the Note.

4. Modification of Certain Provisions of the Loan Agreement. The following provisions of the Loan Agreement as amended and modified as follows:

#### Section 1.1: Definitions

“Default Rate” means the maximum interest rate allowed by law.

“Guarantor” means Elaina V. Johnson and any other Person that now or hereafter guarantees the Obligations in whole or in part.

“Loan Amount” means \$4,120,000.00.

“Obligations” means any and all amounts and liabilities of whatever nature owing or to be owing by Borrower Parties to Lender, from time to time in respect of the Loan, whether now existing or hereafter incurred, and all of the Borrower Parties’ undertakings in and under the Loan Documents including all agreements, representations, warranties and covenants therein and all renewals, extensions, modifications, increases, restatements and amendments of any of the foregoing.

Section 2.8: Optional Prepayment: Deleted; the Indebtedness may be prepaid at any time, without penalty.

Section 2.9: Usury:

Section 6.16: Financial Covenants: Deleted.

Section 10.1: Notices. The addresses for notices are as follows; all other provisions remain in place:

Borrower: Avondale Park Apartments  
Attn: Elaina V. Johnson

Guarantor: Elaina V. Johnson

Lender: ACM Satilla LN VI LLC  
Attn: Alex Livingston  
1718 Peachtree St. NW Suite 276  
Atlanta, Georgia 30309

With copy to: Joseph R. Prochaska  
Prochaska Quinn & Ferraro, P.C.  
401 Church Street, Suite 2600  
Nashville, Tennessee 37219

5. Pledge of Additional Collateral. Borrower shall further secure the obligations under the Note by a pledge to the Lender of \$120,000.00 in cash or cash equivalents (the “Cash Pledge”) contemporaneously with the execution of this Modification.

6. Release of Deed of Trust and Assignment of Leases and Rents. Provided that Borrower is not otherwise in default, Lender shall release the Avondale Park Deed of Trust, the Assignment of Leases and Rents, and the Security Agreement once the outstanding principal balance of the Note has been reduced by \$2,800,000, excluding any principal reduction in exchange for a release of the Cash Pledge.

7. Warranties and Affirmation of Obligations. Borrower and Guarantor each acknowledge, warrant, and represent that (i) their obligations under the Note, Guaranty and other Loan Documents are absolute and unconditional, (ii) there exists no right of deduction, setoff,



recoupment, counterclaim, or defense of any nature whatsoever to enforcement of the Notes or the other Loan Documents that has not been released herein, (iii) all warranties and representations set forth in the Note, Guaranty and other Loan Documents, except for those relating to the previously disclosed payment, solvency and bankruptcy defaults, are true and correct as of the date hereof, (iv) except for as detailed herein, as of the execution of this Agreement, no event of default exists under the Loan Documents and no condition exists which, with the giving of notice, the passing of time, or both, would constitute an event of default, except for those relating to the previously disclosed payment, solvency and bankruptcy defaults; and (v) this Agreement, the Note, the Guaranty and the other Loan Documents are valid and enforceable against Borrower and Guarantor in accordance with their respective terms.

8. Acknowledgement of Complete Obligation. Lender hereby acknowledges and agrees that, notwithstanding its acquisition from U.S. Bank National Association of the "Bank's Interest," as defined in that certain *Assignment Agreement* executed by and between Lender and U.S. Bank National Association contemporaneously with this Agreement, Lender's exclusive claims against Borrower, and Borrower's exclusive monetary obligations to Lender, are those monetary obligations set forth in the Note, totaling \$4,120,000.00, and that certain *Promissory Note* (the "Supplemental Note") executed by Borrower in favor of Lender contemporaneously with this Agreement, totaling \$51,000.00, for a total monetary obligation of \$4,171,000.00, plus any additional charges, fees, or expenses contained or incorporated therewith, and that Lender shall not assert any claims based on any deficiency arising out of the acquisition of the "Bank's Interest" as defined above.

9. Obligation to Fund. Lender hereby acknowledges and agrees that upon Borrower's execution of this Agreement and contribution of not less than \$240,000.00 towards the "Assignment Price" as defined in that certain *Settlement Agreement* executed by U.S. Bank National Association and Lender, Lender hereby warrants and covenants that it will satisfy its obligations under the *Settlement Agreement* referenced herein and that certain *Assignment Agreement* referenced in Paragraph 8 of this Agreement, including but not limited to paying the remaining \$3,660,000.00 to U.S. Bank National Association as required by the *Settlement Agreement* and *Assignment Agreement*.

10. Default. Each of the following shall constitute an Event of Default hereunder: (a) the existence of any Event of Default under the Notes, Deed of Trust, Loan Agreement, or any Loan Document; (b) Borrower fail to keep or perform any of the covenants or agreements contained herein; or (c) any representation or warranty of Borrower in this Agreement be or become false, misleading or incorrect in any material respect.

11. Unconditional Full Release of All Claims and Defenses. In consideration of Lender's execution of this Agreement, and for other valuable consideration, the receipt and sufficiency of which are acknowledged, and excepting only the contractual obligations respecting future performance by Lender arising under this Agreement and the other Loan Documents, each of the Borrower Parties does hereby release, acquit, and forever discharge the Lender Parties of and from any and all Claims that any of the Borrower Parties had, or now has, against any Lender Party, for or by any reason of any matter, cause, or thing whatsoever occurring on or prior to the date hereof. Each of the Borrower Parties further waives any presently existing defenses against the payment and performance of all obligations (of every

nature, character, and description) to Lender or any other Lender Party under the Note, the Guaranty the Loan Agreement, or any other Loan Documents, or otherwise. Each of the Borrower Parties agrees not to commence, join in or prosecute any suit or other proceeding in a position that is adverse to any Lender Party arising directly or indirectly from any matter released herein. Each of the Borrower Parties represents and warrants that it has not purported to transfer, assign, or otherwise convey any interest in any matter released herein to any other persons or entity and that its execution hereof does not require the consent of or notice to any third party.

12. Construction of Agreement. Except as expressly provided herein, the Loan Documents shall remain in full force and effect in accordance with their respective terms, and this Agreement shall not be construed to (i) impair the validity, perfection, or priority of any security interest or lien granted therein or (ii) waive or impair any rights, powers, or remedies of any Lender under the Loan Documents. This Agreement has been reviewed fully by all parties and shall not be construed against any party as author.

13. Not Partners; No Third Party Beneficiaries. Nothing contained herein or in any related document shall be deemed to render Lender a partner of Borrower or any Borrower Party for any purpose. This Agreement has been executed for the sole benefit of Lender and Borrower and there are no third party beneficiaries hereof.

14. No Reliance on Lender's Analysis. Borrower acknowledges and represents that, in connection with its business activities and its execution of this Agreement, it has not relied upon any financial projection, budget, assessment, or other analysis by Lender or any of Lender's representatives or agents, or upon any representation by Lender as to the risks, benefits, or prospects of Borrower or its business activities or present or future capital needs incidental thereto, all such considerations having been examined fully and independently by such parties.

15. Applicable Law. **THE VALIDITY AND CONSTRUCTION OF THIS AGREEMENT SHALL BE DETERMINED ACCORDING TO THE SUBSTANTIVE LAWS OF GEORGIA.**

16. Waiver of Jury Trial. **LENDER, BORROWER AND GUARANTOR HEREBY KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHTS TO A TRIAL BY JURY WITH REGARD TO ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR IN TORT, AT LAW OR IN EQUITY, OF ANY TYPE OR NATURE WHATSOEVER ARISING FROM OR RELATED TO THIS AGREEMENT.**

17. Indulgence Not Waiver. Lender's indulgence in any other departure from the terms of this Agreement or the Loan Documents shall not prejudice Lender's right to demand strict compliance therewith.

18. Assignment. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of Borrower and Lender, except that Borrower may not assign any rights or delegate any obligations arising hereunder or under the Loan Documents

without the prior written consent of Lender. Any attempted assignment or delegation without the required prior consent shall be void.

19. Entire Agreement. This Agreement represents the entire agreement between the parties covering the subject matter hereof, and all oral discussions and prior agreements are merged herein. In the event of an inconsistency between this Agreement and the provisions of the Loan Documents, the provisions of this Agreement shall control.

20. Amendment, Modification, and Waiver in Writing. No provision of this Agreement or the Loan Documents can be amended, modified, or waived, except by a statement in writing signed in hand by the party against which enforcement of the amendment, modification, or waiver is sought (e.g., emails and voice mails shall not be effective to amend, modify or waive any provision hereof).

21. Expenses. Lender acknowledges that Borrower has paid all costs and expenses incurred by Lender and arising out of or relating to the preparation and negotiation of this Agreement as part of its obligations under the Note and the Supplemental Note. The Parties further agree that in the event of any breach of any covenant or agreement or the incorrectness or inaccuracy of any representation and warranty of Borrower or Lender contained in the Loan Documents, this Agreement, or any document delivered to Lender by Borrower pursuant to the terms of this Agreement, the prevailing party in any subsequent litigation arising therefrom shall be entitled to recover all costs and expenses (including, without limitation, reasonable attorneys' fees and litigation expenses) actually incurred in enforcing said breach.

22. Severability. Should any provision of this Agreement be invalid or unenforceable for any reason, the remaining provisions hereof shall remain in full effect.

23. Gender and Number. Words used herein indicating gender or number shall be read as context may require.

24. Captions not Controlling. Captions and headings have been included in this Agreement for the convenience of the parties, and shall not be construed as affecting the content of the respective sections.

25. Counterparts. This Agreement may be executed in counterparts with all signatures or by counterpart signature pages, and it shall not be necessary that the signatures of all parties be contained on any one document. Each counterpart shall be deemed an original, but all of them together shall constitute one and the same instrument.

**Signatures on the following page**

This Extension Agreement is executed as of May \_\_\_\_, 2016.

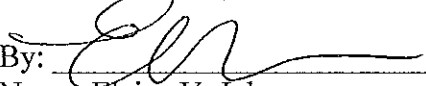
**LENDER:**

ACM Satilla LN VI LLC, LLC

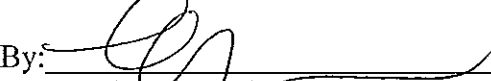
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BORROWER:**

Avondale Park Apartments

By:  \_\_\_\_\_  
Name: Elaina V. Johnson  
Its: General Partner

**GUARANTOR:**

By:  \_\_\_\_\_  
Name: Elaina V. Johnson

## EXTENSION AND MODIFICATION AGREEMENT

This Extension and Modification Agreement (this "Agreement") is executed this \_\_\_\_ day of May, 2016 (the "Effective Date"), by and between ACM Satilla LN VI LLC, a Delaware limited liability company (together with its predecessors in interest, the "Lender"), Hidden Valley Apartments, a Tennessee general partnership ("Borrower") and Elaina V. Johnson ("Guarantor").

### **RECITALS:**

A. Lender is the holder of that certain Combined Amended and Restated Promissory Note executed by Borrower dated May 6, 2016 in the original principal amount of \$4,120,000.00, as thereafter amended from time to time, with a final maturity of November 6, 2017 (the "Note"), which was in turn an extension, modification and renewal of that of certain Promissory Note executed by Borrower, which was endorsed to Lender, of dated December 2, 2011 in the original principal amount of \$1,500,000.00 (the "Note Prior to Amendment").

B. The Note is further evidenced, governed and secured by various documents including that certain Tennessee Deed of Trust dated December 2, 2011, executed by Borrower, and of record at Book DT494, page 516, Giles County Register of Deeds (the "Deed of Trust"); that certain Absolute Assignment of Leases and Rents dated December 2, 2011 executed by Borrower, and of record at Book DT494, page 533, Giles County Register of Deeds (the "Assignment of Leases and Rents"); that certain Assignment and Security Agreement dated December 2, 2011 and executed by Borrower and Lender (the "Security Agreement"); that certain Loan Agreement dated December 2, 2011 (the "Loan Agreement"); and that certain Commercial Guaranty executed by Guarantor on or about December 2, 2011 (the "Guaranty").

C. The Borrower has requested that Lender modify the terms of the Loan, including extending the maturity date of the Loan, under the terms and conditions set forth in this Agreement.

D. Lender is willing to modify the terms of the Loan, provided that Lender receive certain assurances and agreements from the Borrower and Guarantor, as further set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. As used below in this Agreement, (i) terms defined in the preamble and recitals above shall have the meanings herein set forth, (ii) the following capitalized terms have the meanings assigned below, and (iii) capitalized terms used, but not defined, herein shall have the same meanings attributed to them in the respective Loan Documents:

"Affiliate" means, with respect to any Person, another Person who (i) owns an equity interest in the first Person, of any degree, (ii) in owned, as to equity interest, by the first Person, in any degree, (iii) Controls the first Person, (iv) is Controlled by the first Person, or (v) is Controlled by a Person who also Controls the first Person.

"Borrower Parties" means (i) Borrower, its respective predecessors, successors and assigns, (ii) Guarantor; (ii) and the respective present and previous agents, attorneys, representatives, Affiliates, officers, and directors of Borrower and/or Guarantor.

"Claims" means any and all accounts, covenants, agreements, obligations, claims, debts, liabilities, offsets, demands, costs, expenses, actions, or causes of action of every nature, character, and description, whether arising at law or equity or under statute, regulation, or otherwise, and whether liquidated or unliquidated, contingent or noncontingent, known or unknown, suspected or unsuspected.

"Control" means the ability to substantially direct the policies of a Person, whether directly or indirectly, and whether such influence exists by right or by economic compulsion.

"Lender Parties" means Lender, its participants, predecessors, successors and assigns and their present and previous agents, attorneys, accountants, consultants, representatives, Affiliates, officers, directors, employees, and each of them.

"Person" means any natural person and any legal entity with the ability to enter into contracts.

2. Principal Balance. As of May 6, 2016, Borrower and Guarantor agree that the current outstanding balance of the Combined Amended and Restated Note is \$4,120,000.00 (inclusive of all accrued interest, charges, fees or expenses payable in connection with the Loan; with such items, the "Indebtedness").

3. Payments. Lender shall agree to accept and Borrower shall continue to make payments, at the rates and in the amounts set forth in the Note.

4. Modification of Certain Provisions of the Loan Agreement. The following provisions of the Loan Agreement as amended and modified as follows:

#### Section 1.1: Definitions

"Default Rate" means the maximum interest rate allowed by law.

"Guarantor" means Elaina V. Johnson and any other Person that now or hereafter guarantees the Obligations in whole or in part.

"Loan Amount" means \$4,120,000.00.

“Obligations” means any and all amounts and liabilities of whatever nature owing or to be owing by Borrower Parties to Lender, from time to time in respect of the Loan, whether now existing or hereafter incurred, and all of the Borrower Parties’ undertakings in and under the Loan Documents including all agreements, representations, warranties and covenants therein and all renewals, extensions, modifications, increases, restatements and amendments of any of the foregoing.

Section 2.8: Optional Prepayment: Deleted; the Indebtedness may be prepaid at any time, without penalty.

Section 2.9: Usury:

Section 6.16: Financial Covenants: Deleted.

Section 10.1: Notices. The addresses for notices are as follows; all other provisions remain in place:

Borrower: Hidden Valley Apartments  
Attn: Elaina V. Johnson

Guarantor: Elaina V. Johnson

Lender: ACM Satilla LN VI LLC  
Attn: Alex Livingston  
1718 Peachtree St. NW Suite 276  
Atlanta, Georgia 30309

With copy to: Joseph R. Prochaska  
Prochaska Quinn & Ferraro, P.C.  
401 Church Street, Suite 2600  
Nashville, Tennessee 37219

5. Pledge of Additional Collateral. Borrower shall further secure the obligations under the Note by a pledge to the Lender of \$120,000.00 in cash or cash equivalents (the “Cash Pledge”) contemporaneously with the execution of this Modification.

6. Release of Deed of Trust and Assignment of Leases and Rents. Provided that Borrower is not otherwise in default, Lender shall release the Hidden Valley Deed of Trust, the Assignment of Leases and Rents, and the Security Agreement once the outstanding principal balance of the Note has been reduced by \$1,575,000, excluding any principal reduction in exchange for a release of the Cash Pledge.

7. Warranties and Affirmation of Obligations. Borrower and Guarantor each acknowledge, warrant, and represent that (i) their obligations under the Note, Guaranty and other Loan Documents are absolute and unconditional, (ii) there exists no right of deduction, setoff, recoupment, counterclaim, or defense of any nature whatsoever to enforcement of the Notes or

the other Loan Documents that has not been released herein, (iii) all warranties and representations set forth in the Note, Guaranty and other Loan Documents are true and correct as of the date hereof, except for those relating to the previously disclosed payment, solvency and bankruptcy defaults, (iv) except for as detailed herein, as of the execution of this Agreement, no event of default exists under the Loan Documents and no condition exists which, with the giving of notice, the passing of time, or both, would constitute an event of default except for those relating to the previously disclosed payment, solvency and bankruptcy defaults, and (v) this Agreement, the Note, the Guaranty and the other Loan Documents are valid and enforceable against Borrower and Guarantor in accordance with their respective terms.

8. Acknowledgement of Complete Obligation. Lender hereby acknowledges and agrees that, notwithstanding its acquisition from U.S. Bank National Association of the "Bank's Interest," as defined in that certain *Assignment Agreement* executed by and between Lender and U.S. Bank National Association contemporaneously with this Agreement, Lender's exclusive claims against Borrower, and Borrower's exclusive monetary obligations to Lender, are those monetary obligations set forth in the Note, totaling \$4,120,000.00, and that certain *Promissory Note* (the "Supplemental Note") executed by Borrower in favor of Lender contemporaneously with this Agreement, totaling \$51,000.00, for a total monetary obligation of \$4,171,000.00, plus any additional charges, fees, or expenses contained or incorporated therewith, and that Lender shall not assert any claims based on any deficiency arising out of the acquisition of the "Bank's Interest" as defined above.

9. Obligation to Fund. Lender hereby acknowledges and agrees that upon Borrower's execution of this Agreement and contribution of not less than \$240,000.00 towards the "Assignment Price" as defined in that certain *Settlement Agreement* executed by U.S. Bank National Association and Lender, Lender hereby warrants and covenants that it will satisfy its obligations under the *Settlement Agreement* referenced herein and that certain *Assignment Agreement* referenced in Paragraph 8 of this Agreement, including but not limited to paying the remaining \$3,660,000.00 to U.S. Bank National Association as required by the *Settlement Agreement* and *Assignment Agreement*.

10. Default. Each of the following shall constitute an Event of Default hereunder: (a) the existence of any Event of Default under the Notes, Deed of Trust, Loan Agreement, or any Loan Document; (b) Borrower fail to keep or perform any of the covenants or agreements contained herein; or (c) any representation or warranty of Borrower in this Agreement be or become false, misleading or incorrect in any material respect.

11. Unconditional Full Release of All Claims and Defenses. In consideration of Lender's execution of this Agreement, and for other valuable consideration, the receipt and sufficiency of which are acknowledged, and excepting only the contractual obligations respecting future performance by Lender arising under this Agreement and the other Loan Documents, each of the Borrower Parties does hereby release, acquit, and forever discharge the Lender Parties of and from any and all Claims that any of the Borrower Parties had, or now has, against any Lender Party, for or by any reason of any matter, cause, or thing whatsoever occurring on or prior to the date hereof. Each of the Borrower Parties further waives any presently existing defenses against the payment and performance of all obligations (of every nature, character, and description) to Lender or any other Lender Party under the Note, the



Guaranty the Loan Agreement, or any other Loan Documents, or otherwise. Each of the Borrower Parties agrees not to commence, join in or prosecute any suit or other proceeding in a position that is adverse to any Lender Party arising directly or indirectly from any matter released herein. Each of the Borrower Parties represents and warrants that it has not purported to transfer, assign, or otherwise convey any interest in any matter released herein to any other persons or entity and that its execution hereof does not require the consent of or notice to any third party.

12. Construction of Agreement. Except as expressly provided herein, the Loan Documents shall remain in full force and effect in accordance with their respective terms, and this Agreement shall not be construed to (i) impair the validity, perfection, or priority of any security interest or lien granted therein or (ii) waive or impair any rights, powers, or remedies of any Lender under the Loan Documents. This Agreement has been reviewed fully by all parties and shall not be construed against any party as author.

13. Not Partners: No Third Party Beneficiaries. Nothing contained herein or in any related document shall be deemed to render Lender a partner of Borrower or any Borrower Party for any purpose. This Agreement has been executed for the sole benefit of Lender and Borrower and there are no third party beneficiaries hereof.

14. No Reliance on Lender's Analysis. Borrower acknowledges and represents that, in connection with its business activities and its execution of this Agreement, it has not relied upon any financial projection, budget, assessment, or other analysis by Lender or any of Lender's representatives or agents, or upon any representation by Lender as to the risks, benefits, or prospects of Borrower or its business activities or present or future capital needs incidental thereto, all such considerations having been examined fully and independently by such parties.

15. Applicable Law. **THE VALIDITY AND CONSTRUCTION OF THIS AGREEMENT SHALL BE DETERMINED ACCORDING TO THE SUBSTANTIVE LAWS OF GEORGIA.**

16. Waiver of Jury Trial. **LENDER, BORROWER AND GUARANTOR HEREBY KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHTS TO A TRIAL BY JURY WITH REGARD TO ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR IN TORT, AT LAW OR IN EQUITY, OF ANY TYPE OR NATURE WHATSOEVER ARISING FROM OR RELATED TO THIS AGREEMENT.**

17. Indulgence Not Waiver. Lender's indulgence in any other departure from the terms of this Agreement or the Loan Documents shall not prejudice Lender's right to demand strict compliance therewith.

18. Assignment. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of Borrower and Lender, except that Borrower may not assign any rights or delegate any obligations arising hereunder or under the Loan Documents

without the prior written consent of Lender. Any attempted assignment or delegation without the required prior consent shall be void.

19. Entire Agreement. This Agreement represents the entire agreement between the parties covering the subject matter hereof, and all oral discussions and prior agreements are merged herein. In the event of an inconsistency between this Agreement and the provisions of the Loan Documents, the provisions of this Agreement shall control.

20. Amendment, Modification, and Waiver in Writing. No provision of this Agreement or the Loan Documents can be amended, modified, or waived, except by a statement in writing signed in hand by the party against which enforcement of the amendment, modification, or waiver is sought (e.g., emails and voice mails shall not be effective to amend, modify or waive any provision hereof).

21. Expenses. Lender acknowledges that Borrower has paid all costs and expenses incurred by Lender and arising out of or relating to the preparation and negotiation of this Agreement as part of its obligations under the Note and the Supplemental Note. The Parties further agree that in the event of any breach of any covenant or agreement or the incorrectness or inaccuracy of any representation and warranty of Borrower or Lender contained in the Loan Documents, this Agreement, or any document delivered to Lender by Borrower pursuant to the terms of this Agreement, the prevailing party in any subsequent litigation arising therefrom shall be entitled to recover all costs and expenses (including, without limitation, reasonable attorneys' fees and litigation expenses) actually incurred in enforcing said breach.

22. Severability. Should any provision of this Agreement be invalid or unenforceable for any reason, the remaining provisions hereof shall remain in full effect.

23. Gender and Number. Words used herein indicating gender or number shall be read as context may require.

24. Captions not Controlling. Captions and headings have been included in this Agreement for the convenience of the parties, and shall not be construed as affecting the content of the respective sections.

25. Counterparts. This Agreement may be executed in counterparts with all signatures or by counterpart signature pages, and it shall not be necessary that the signatures of all parties be contained on any one document. Each counterpart shall be deemed an original, but all of them together shall constitute one and the same instrument.

**Signatures on the following page**

This Extension Agreement is executed as of May \_\_\_\_, 2016.

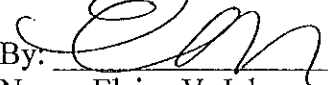
**LENDER:**

ACM Satilla LN VI LLC


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

**BORROWER:**

Hidden Valley Apartments

By:  \_\_\_\_\_  
Name: Elaina V. Johnson  
Its: General Partner

**GUARANTOR:**

By:  \_\_\_\_\_  
Name: Elaina V. Johnson

Maximum principal indebtedness  
for Tennessee recording tax purposes  
is: **\$0.00**

This Instrument was Prepared by:  
Prochaska Quinn & Ferraro, P.C.  
L&C Tower, Suite 2600  
401 Church Street  
Nashville, Tennessee 37219

### **FIRST AMENDMENT TO DEED OF TRUST**

**THIS INSTRUMENT** ("First Amendment") is executed this \_\_\_\_ day of May, 2016, by and between Avondale Park Valley Apartments, a Tennessee general partnership ("Grantor"), and ACM Satilla LN VI LLC, a Delaware limited liability company ("Beneficiary"), and amends that Deed of Trust of record at **Volume 1394, Page 2404**, Register of Deeds Office of Montgomery County, Tennessee (the "Deed of Trust") evidencing Grantor's conveyance to James C. Cotey ("Trustee"), of certain real property, as more fully set forth in the Deed of Trust (the "Property").

**WHEREAS**, Beneficiary has entered into certain documentation, evidencing the change in certain terms and conditions related to the indebtedness owed by Grantor to Beneficiary.

**WHEREAS**, one condition to Beneficiary entering into such agreements is that all of the Grantor's obligations to Beneficiary must be fully secured by certain of the Grantor's assets including, but not limited to, the Property.

### **WITNESSETH:**

**NOW THEREFORE IN CONSIDERATION** of TEN DOLLARS (\$10.00), the extension of credit by Beneficiary, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Beneficiary do modify and amend the Deed of Trust as follows:

1. **Recitals.** Grantor represents and warrants that the recitals set forth above are true and correct in every respect. The recitals set forth above are hereby incorporated herein by this reference. All terms not otherwise defined herein shall have the meanings subscribed to them in the Deed of Trust.

2. **Additional Indebtedness Secured by Property.** The indebtedness secured by the Property is amended to include all obligations, debts and liabilities, plus interest thereon, of Grantor and any Guarantor of Grantor to Beneficiary, as well as all claims by Beneficiary against Grantor (other than the claims acquired by Beneficiary that were not secured by the Property as of the date that Grantor filed its chapter 11 bankruptcy case, including but not limited to the claims purchased by Beneficiary's predecessor-in-interest from other creditors in said chapter 11 bankruptcy case post-petition), whether now existing or hereafter arising, whether related or unrelated to the purpose of the Indebtedness, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether

obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become otherwise unenforceable.

3. **Preservation of Original Deed of Trust/No Novation.** Except as specifically modified by this First Amendment, all representations, warranties, covenants, grants, pledges, and other undertakings or agreements of any and every nature as set forth in the Deed of Trust are hereby reaffirmed and incorporated herein as if contained in this First Amendment, *verbatim*. This First Amendment shall not be construed as a novation of the Promissory Note secured by the Deed of Trust.

4. **Secured Indebtedness Not Limited by Statements for Tax and Registration Authorities.** Any legend appearing on the face hereof and any affidavit that may be submitted to recording authorities herewith pursuant to any requirement of taxation or registration authorities is included for the benefit of such authorities only and does not affect the terms of Beneficiary's agreement with Grantor as provided by this First Amendment and by other documents pertaining to the Secured Indebtedness or the priority of the lien of this First Amendment or any advances made hereunder.

5. **No Subordination to Contractors or Gap Liens.** Beneficiary has not consented to any priority of a contractor's lien for construction of any improvements to the Property, and any such lien hereafter arising shall be subordinate to the lien of this First Amendment. Grantor warrants that Grantor is lawfully seised of the Property, and that Grantor will forever warrant and defend the title thereto unto Trustee, his successors and assigns, against the claims of all persons whomsoever.

6. **Severability; Conformity to Law.** Should any provision or clause of this First Amendment be held invalid for any reason, the remaining provisions of this First Amendment shall be given effect to the extent possible absent the invalid provision. To this end, the provisions of this First Amendment are declared to be severable. Additionally, the provisions hereof are subject to all applicable federal, state and local laws and regulations, and shall be read to so comply if specific facts surrounding the execution hereof cause any provision to be contrary to any applicable law or regulation under the circumstances.

7. **Amendment.** Any amendment to or modification of this First Amendment may be made by and between Grantor and Beneficiary without necessity of joinder therein by Trustee. Any such amendment or modification, to be valid, must be made in writing, signed by Grantor and Beneficiary, and duly recorded with the appropriate register of deeds in Tennessee.

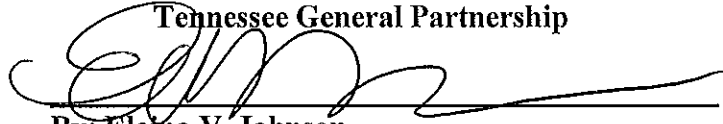
8. **Replacement of Trustee.** Beneficiary hereby substitutes Joseph R. Prochaska, a resident of Davidson County, Tennessee, in the place and stead of James C. Cotey as Trustee. Beneficiary shall at all times have the irrevocable right to remove Trustee without notice or cause and to appoint Trustee's successor by a recorded instrument. If Trustee dies or resigns, Beneficiary shall have the right to appoint its successor by recorded instrument. Any Successor Trustee appointed pursuant to this paragraph shall be vested with title to the Property and shall possess all the powers, duties and obligations herein conferred on Trustee in the same manner and to the same extent as though he were named herein as Trustee

9. **Captions Not Controlling.** Captions to the paragraphs of this First Amendment have been included for convenience only and do not limit or control the contents of the respective paragraphs.

EXECUTED the date first written above.

GRANTOR:

AVONDALE PARK APARTMENTS, a  
Tennessee General Partnership

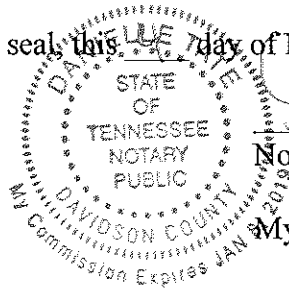


By: Elaina V. Johnson  
Its: General Partner

STATE OF TENNESSEE     )  
COUNTY OF MONTGOMERY    )

BEFORE ME, THE UNDERSIGNED, a Notary Public of the State and County  
aforementioned, personally appeared Elaina V. Johnson, with whom I am personally acquainted  
(or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged  
herself to be the General Partner of Avondale Park Apartments and as such authorized officer  
executed the foregoing instrument for the purpose therein contained, and/or acknowledged this  
instrument to be the free act and deed of Avondale Park Apartments.

WITNESS my hand and seal, this 16 day of May, 2016.



  
Notary Public

My Commission Expires: 1/8/19

Personally known: \_\_\_\_\_ or Produced Identification: ✓  
Type of Identification Produced: \_\_\_\_\_ Driver's License ✓ Other: \_\_\_\_\_

**BENEFICIARY:**

**ACM Satilla LN VI LLC,**  
a Delaware limited liability company

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

Name: \_\_\_\_\_

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

**STATE OF GEORGIA**                    )  
**COUNTY OF \_\_\_\_\_**            )

**BEFORE ME, THE UNDERSIGNED,** a Notary Public of the State and County  
aforementioned, personally appeared \_\_\_\_\_, with whom I am  
personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon  
oath, acknowledged him/herself to be the managing member of ACM Satilla LN VI LLC, a  
limited liability company, and as such authorized officer executed the foregoing instrument for  
the purpose therein contained, and/or acknowledged this instrument to be the free act and deed of  
ACM Satilla LN VI LLC.

**WITNESS** my hand and seal, this \_\_\_\_ day of May, 2016.

\_\_\_\_\_  
Notary Public

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



Maximum principal indebtedness  
for Tennessee recording tax purposes  
is: **\$0.00**

This Instrument was Prepared by:  
Prochaska Quinn & Ferraro, P.C.  
L&C Tower, Suite 2600  
401 Church Street  
Nashville, Tennessee 37219

### **FIRST AMENDMENT TO DEED OF TRUST**

**THIS INSTRUMENT** ("First Amendment") is executed this \_\_\_\_ day of May, 2016, by and between Hidden Valley Apartments, a Tennessee general partnership ("Grantor"), and ACM Satilla LN VI LLC, a Delaware limited liability company ("Beneficiary"), and amends that Deed of Trust of record at **Book DT494, page 516**, Register of Deeds Office of Giles County, Tennessee (the "Deed of Trust") evidencing Grantor's conveyance to James C. Cotey ("Trustee"), of certain real property, as more fully set forth in the Deed of Trust (the "Property").

**WHEREAS**, Beneficiary has entered into certain documentation, evidencing the change in certain terms and conditions related to the indebtedness owed by Grantor to Beneficiary.

**WHEREAS**, one condition to Beneficiary entering into such agreements is that all of the Grantor's obligations to Beneficiary must be fully secured by certain of the Grantor's assets including, but not limited to, the Property.

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

**NOW THEREFORE IN CONSIDERATION** of TEN DOLLARS (\$10.00), the extension of credit by Beneficiary, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Beneficiary do modify and amend the Deed of Trust as follows:

1. **Recitals.** Grantor represents and warrants that the recitals set forth above are true and correct in every respect. The recitals set forth above are hereby incorporated herein by this reference. All terms not otherwise defined herein shall have the meanings subscribed to them in the Deed of Trust.

2. **Additional Indebtedness Secured by Property.** The indebtedness secured by the Property is amended to include all obligations, debts and liabilities, plus interest thereon, of Grantor and any Guarantor of Grantor to Beneficiary, as well as all claims by Beneficiary against Grantor (other than the claims acquired by Beneficiary that were not secured by the Property as of the date that Grantor filed its chapter 11 bankruptcy case, including but not limited to the claims purchased by Beneficiary's predecessor-in-interest from other creditors in said chapter 11 bankruptcy case post-petition) whether now existing or hereafter arising, whether related or unrelated to the purpose of the Indebtedness, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become otherwise unenforceable.

3. **Preservation of Original Deed of Trust/No Novation.** Except as specifically modified by this First Amendment, all representations, warranties, covenants, grants, pledges, and other undertakings or agreements of any and every nature as set forth in the Deed of Trust are hereby reaffirmed and incorporated herein as if contained in this First Amendment, *verbatim*. This First Amendment shall not be construed as a novation of the Promissory Note secured by the Deed of Trust.

4. **Secured Indebtedness Not Limited by Statements for Tax and Registration Authorities.** Any legend appearing on the face hereof and any affidavit that may be submitted to recording authorities herewith pursuant to any requirement of taxation or registration authorities is included for the benefit of such authorities only and does not affect the terms of Beneficiary's agreement with Grantor as provided by this First Amendment and by other documents pertaining to the Secured Indebtedness or the priority of the lien of this First Amendment or any advances made hereunder.

5. **No Subordination to Contractors or Gap Liens.** Beneficiary has not consented to any priority of a contractor's lien for construction of any improvements to the Property, and any such lien hereafter arising shall be subordinate to the lien of this First Amendment. Grantor warrants that Grantor is lawfully seised of the Property, and that Grantor will forever warrant and defend the title thereto unto Trustee, his successors and assigns, against the claims of all persons whomsoever.

6. **Severability; Conformity to Law.** Should any provision or clause of this First Amendment be held invalid for any reason, the remaining provisions of this First Amendment shall be given effect to the extent possible absent the invalid provision. To this end, the provisions of this First Amendment are declared to be severable. Additionally, the provisions hereof are subject to all applicable federal, state and local laws and regulations, and shall be read to so comply if specific facts surrounding the execution hereof cause any provision to be contrary to any applicable law or regulation under the circumstances.

7. **Amendment.** Any amendment to or modification of this First Amendment may be made by and between Grantor and Beneficiary without necessity of joinder therein by Trustee. Any such amendment or modification, to be valid, must be made in writing, signed by Grantor and Beneficiary, and duly recorded with the appropriate register of deeds in Tennessee.

8. **Replacement of Trustee.** Beneficiary hereby substitutes Joseph R. Prochaska, a resident of Davidson County, Tennessee, in the place and stead of James C. Cotey as Trustee. Beneficiary shall at all times have the irrevocable right to remove Trustee without notice or cause and to appoint Trustee's successor by a recorded instrument. If Trustee dies or resigns, Beneficiary shall have the right to appoint its successor by recorded instrument. Any Successor Trustee appointed pursuant to this paragraph shall be vested with title to the Property and shall possess all the powers, duties and obligations herein conferred on Trustee in the same manner and to the same extent as though he were named herein as Trustee

9. **Captions Not Controlling.** Captions to the paragraphs of this First Amendment have been included for convenience only and do not limit or control the contents of the respective paragraphs.

EXECUTED the date first written above.

GRANTOR:

HIDDEN VALLEY APARTMENTS, a Tennessee  
General Partnership



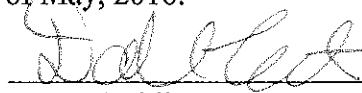
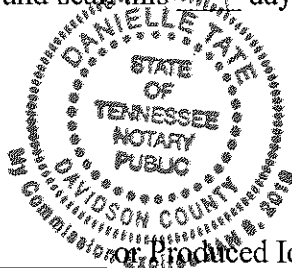
By: Elaina V. Johnson

Its: General Partner

STATE OF TENNESSEE     )  
COUNTY OF MONTGOMERY    )

BEFORE ME, THE UNDERSIGNED, a Notary Public of the State and County  
aforementioned, personally appeared Elaina V. Johnson, with whom I am personally acquainted  
(or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged  
herself to be the General Partner of Hidden Valley Apartments and as such authorized officer  
executed the foregoing instrument for the purpose therein contained, and/or acknowledged this  
instrument to be the free act and deed of Hidden Valley Apartments.

WITNESS my hand and seal, this 4 day of May, 2016.



Notary Public

My Commission Expires: 1/8/19

Personally known: \_\_\_\_\_ or Produced Identification: ☒  
Type of Identification Produced: \_\_\_\_\_ Driver's License ☒ Other: \_\_\_\_\_

**BENEFICIARY:**

**ACM Satilla LN VI LLC**, a Delaware limited liability company

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

Name: \_\_\_\_\_

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

STATE OF GEORGIA                    )  
COUNTY OF \_\_\_\_\_            )

**BEFORE ME, THE UNDERSIGNED**, a Notary Public of the State and County aforementioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be the managing member of **ACM Satilla LN VI LLC**, a limited liability company, and as such authorized officer executed the foregoing instrument for the purpose therein contained, and/or acknowledged this instrument to be the free act and deed of **ACM Satilla LN VI LLC**.

**WITNESS** my hand and seal, this \_\_\_\_ day of May, 2016.

\_\_\_\_\_  
Notary Public

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

**PROMISSORY NOTE**

**\$ 51,000.00**

**Atlanta, Georgia**

**May 6, 2016**

FOR VALUE RECEIVED, **HIDDEN VALLEY APARTMENTS**, a Tennessee general partnership and **AVONDALE PARK APARTMENTS, GP** a Tennessee general partnership (collectively "Maker"), promises to pay to the order of **ACM Satilla LN VI LLC**, the sum of Fifty-One Thousand and 00/100 Dollars (\$51,000.00), on or before May 6, 2017.

All amounts due under this Note are payable at par in lawful money of the United States of America, to Holder care of the Prochaska Quinn & Ferraro, P.C. Trust Account, 401 Church Street, Suite 2600, Nashville, Tennessee or at such place as the holder hereof (hereinafter "Holder") may direct.

A default shall occur under this Note if Maker fails to make the payment required hereunder when due (time is of the essence hereof); or if Maker becomes insolvent; or if Maker files bankruptcy or receivership proceedings or has such proceedings filed against it; or if any property of Maker is subjected to attachment, execution or other process; or if a default occurs under any collateral document securing the indebtedness evidenced by this Note.

Upon the occurrence of a default, as defined above, Holder may, at its option, declare all principal and interest provided for under this Note, and any other obligations of Maker to Holder, to be presently due and payable, and Holder may enforce any remedies available to Holder under any documents securing or evidencing debts of Maker to Holder. Holder may waive any default before or after it occurs and may restore this Note in full effect without impairing the right to declare it due for a subsequent default. Following default, interest shall accrue on the principal balance hereof at highest rate allowable by law.

Maker and all sureties, guarantors, endorsers and other parties to this instrument hereby consent to any and all renewals, waivers, modifications, or extensions of time (of any duration) that may be granted by Holder with respect to this Note and severally waive demand, presentment, protest, notice of dishonor, and all other notices that might otherwise be required by law. Holder may release collateral securing this Note or parties liable therefor, in its sole discretion.

Maker and all sureties, guarantors, endorsers and other parties hereto agree to pay reasonable attorneys' fees and all court and other costs that Holder may incur in the course of efforts to collect the debt evidenced hereby or to protect Holder's interest in any collateral securing the same.

The validity and construction of this Note shall be determined according to the laws of Georgia applicable to contracts executed and performed within that state. If any provision of this Note should for any reason be invalid or unenforceable, the remaining provisions hereof shall remain in full effect.

Words used herein indicating gender or number shall be read as context may require.

The provisions of this Note may be amended or waived only by instrument in writing signed by the Holder and Maker hereof and attached to this Note.

**MAKER AND HOLDER (BY ITS ACCEPTANCE OF THIS NOTE), HEREBY KNOWINGLY, WILLINGLY AND IRREVOCABLY WAIVES ITS AND THEIR RIGHTS TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS NOTE OR ANY RELATIONSHIP BETWEEN MAKER AND HOLDER. MAKER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS SECTION MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

Executed the date first written above.

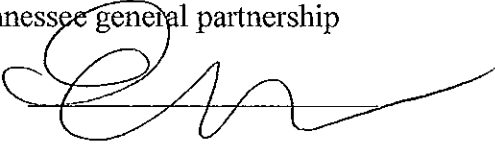
**BORROWERS:**

HIDDEN VALLEY APARTMENTS, GP  
a Tennessee general partnership

By:   
Its: Managing General Partner

By: Elaina Vanders Johnson  
(Name)  
Its: Sole Member

AVONDALE PARK APARTMENTS,  
a Tennessee general partnership

By:   
Its: Managing General Partner

By: Elaina Vanders Johnson  
(Name)  
Its: Sole Member