

## PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 21 day of June, 2022, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and Flats at Hickory Woods, LP (the “**Owner**”).

### WITNESSETH:

WHEREAS, MDHA is a public body and a body corporate and politic organized under the Tennessee Housing Authorities Law, Tenn. Code Ann. §13-20-101, et seq., (the “**Act**”);

WHEREAS, §13-20-104(f) of the Act provides that a metropolitan government may delegate to a housing authority the authority to negotiate and accept in lieu of ad valorem taxes (“**In Lieu of Tax Payments**”) from a party that operates a low income housing tax credit (“**LIHTC**”) property, as such term is defined in the Act (a “**LIHTC Property**”) on property leased by such party from a housing authority;

WHEREAS, MDHA is the housing authority, as defined in the Act, for the Metropolitan Government of Nashville and Davidson County, Tennessee (the “**Metropolitan Government**”);

WHEREAS, by Ordinance No. BL2015-1281 as amended by Ordinance No. BL2016-334 (collectively, the “**PILOT Ordinance**”), the Metropolitan Government (i) authorized MDHA to negotiate and accept In Lieu of Tax Payments from lessees of LIHTC Property owned by MDHA, and (ii) approved MDHA’s program for determining qualifications and eligibility for such In Lieu of Tax Payments (the “**PILOT Program**”);

WHEREAS, Owner plans to acquire land located at 4207 Murfreesboro Pike, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 88 unit apartment project, known as Flats at Hickory Woods, on the Project Site and operate it as a LIHTC Property (the “**Project**”);

WHEREAS, MDHA is authorized by law and has deemed it necessary and desirable to acquire the Project Site for the purpose of facilitating the Project in accordance with the PILOT Program, the PILOT Ordinance and the Act;

WHEREAS, the Board of Commissioners of MDHA approved MDHA’s purchase of the Project Site and authorized the Executive Director of MDHA to take all actions on behalf of MDHA to undertake the following:

- (A) acquire the Project Site;
- (B) enter into a lease with Owner pursuant to which Owner will (i) lease the Project Site and the Project from MDHA with MDHA having the right to cause Owner to purchase the Project Site and the Project from MDHA upon expiration of the tenth (10<sup>th</sup>) Tax Year, (ii) construct the Project on the Project Site, and (iii) by recorded agreement, commit to operate the Project as a LIHTC Property in accordance with the requirements of the Internal Revenue Code and the Tennessee Housing Development Agency (“THDA”) for a minimum period of fifteen (15) years after the Project is complete (the “**Project Lease**”);
- (C) enter into this PILOT Agreement;
- (D) submit this PILOT Agreement to the Metropolitan Planning Commission to obtain a recommendation of approval or disapproval, as envisioned by the PILOT Ordinance;
- (E) submit this PILOT Agreement to the Metropolitan Council of the Metropolitan Government (the “**Metropolitan Council**”) for approval as required by the PILOT Ordinance; and
- (F) take such other action and execute such other documents as the Executive Director deems necessary or desirable to facilitate construction of the Project and the transactions described above consistent with this PILOT Agreement, the Act, the Project Lease, the Metropolitan Ordinance and the PILOT Program (including MDHA’s application and policies and procedures related thereto).

WHEREAS, MDHA intends to acquire the Project Site from Owner and will concurrently enter into the Project Lease; and

WHEREAS, Owner has agreed to make In Lieu of Tax Payments with respect to the Project as described herein.

NOW, THEREFORE, for and in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, and as an inducement to Owner to construct the Project and operate the Project as LIHTC Property, MDHA and Owner agree as follows:

1. With respect to Project Site and the real property component of the Project, Owner shall make In Lieu of Tax payments to MDHA who will then remit the payment to the Metropolitan Government, as follows:

(a) The In Lieu of Tax Payments shall be equal to the Applicable Ad Valorem Taxes, as defined below, through and including the calendar year in which the construction of the Project is completed.

(b) Commencing on January 1<sup>st</sup> of the calendar year following the year in which the Project is placed into service (“**Tax Year 1**”) and each tax year subsequent to the Tax Year 1 (Tax Year 1 and each subsequent tax year being referred to herein as a “**Tax Year**”) through the tenth (10<sup>th</sup>) Tax Year, in Lieu of Tax Payments shall be as follows:

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1	\$65,000
2	\$66,950
3	\$68,959
4	\$71,027
5	\$73,158
6	\$75,353
7	\$77,613
8	\$79,942
9	\$82,340
10	\$84,810

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Subject to Section 1(e) below, the In Lieu of Tax Payments shall be fixed and shall not fluctuate with the amount of the assessment for the Project Site or the Project or the tax rate in effect for any Tax Year. The amount of the In Lieu of Tax Payments is approximately equal to \$738 per unit within the Project, with a three percent (3%) annual increase. In Lieu of Tax Payments for each Tax Year shall be paid when due but in any event not later than the date on which the Applicable Ad Valorem Taxes would become delinquent.

(c) After the tenth Tax Year, this Agreement shall expire and Owner shall pay 100% of the Applicable Ad Valorem Taxes.

(d) The term “**Applicable Ad Valorem Taxes**” shall mean any real property ad valorem taxes that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project.

(e) Notwithstanding anything contained herein to the contrary, if THDA or the IRS determines that the Project is not in compliance with LIHTC requirements and is therefore not operated as a LIHTC Property at any time during a Tax Year, and Owner has failed to cure such default within any specified cure period, Owner shall pay 100% of the Applicable Ad Valorem Taxes with respect to such Tax Year.

(f) Notwithstanding anything contained herein to the contrary, Owner shall pay 100% of the Applicable Ad Valorem Taxes for the periods before Tax Year 1 and after Tax Year 10, if the Project Lease is in effect during such periods.

2. Commencing in Tax Year 1 and in each Tax Year subsequent through the (10<sup>th</sup>) Tax Year, Owner shall provide to MDHA an annual report not later than September 1<sup>st</sup> of each Tax Year containing the following information:

- (a) The value of the Project, as estimated by the Owner;
- (b) The date and remaining term of the Project Lease;
- (c) The amount of In Lieu of Tax Payments payable in such Tax Year;
- (d) The date in which the Project is scheduled to return to the regular tax rolls and be eligible to pay 100% of the Applicable Ad Valorem Taxes following the tenth (10<sup>th</sup>) Tax Year;
- (e) A calculation of the Applicable Ad Valorem Taxes for such Tax Year that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project;
- (f) A copy of the Owner's most recent Annual Certification as submitted to THDA, certifying compliance with LIHTC requirements; and
- (g) A copy of any monitoring or compliance reports provided by THDA to the Owner during such Tax Year.

3. Commencing with Tax Year 1 and each Tax Year thereafter, Owner shall pay to MDHA a monitoring and reporting fee to be set by MDHA but not to exceed five percent (5%) of the amount In Lieu of Tax Payment due with respect to such Tax Year (the "Annual MDHA Fee"). The Annual MDHA Fee shall be paid not later than fifteenth (15) day of such Tax Year. Unpaid amounts shall bear interest at the rate of four percent (4%) in excess of the average prime rate of interest published from time to time by the Federal Reserve or similar commonly accepted reporting organization if the Federal Reserve ceased to publish such information. Owner's failure to pay the Annual MDHA Fee within thirty (30) days after written notice from MDHA shall constitute a default under this PILOT Agreement in which event Owner shall pay 100% of the Applicable Tax Rate for such Tax Year instead of the In Lieu of

Tax Payment set forth above.

4. Owner's payment of the In Lieu of Tax Payments shall satisfy the requirement in Tenn. Code Ann. § 67-5-206(a) that MDHA pay the Metropolitan Government for services, improvements or facilities furnished by the Metropolitan Government for the benefit of the Project.

5. This PILOT Agreement may not be assigned to any party other than the assignee of the lessee's interest under the PILOT Lease pursuant to an assignment that is made in accordance with the PILOT Lease, including MDHA consent requirements, if any, specified therein. Each permitted assignee shall assume Owner's obligations under this PILOT Agreement concurrent with the assignment of the PILOT Lease.

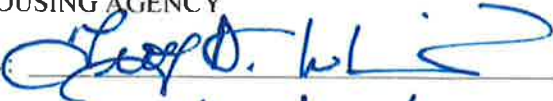
6. This PILOT Agreement shall be construed in accordance with the laws of the State of Tennessee, and if any one or more of the provisions of this PILOT Agreement shall be held invalid, illegal or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, legality or unenforceability shall not affect any other provision hereof, but this PILOT Agreement shall be construed the same as if such invalid, illegal or unenforceable provision had never been contained herein. This PILOT Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

7. This PILOT Agreement is subject to and conditioned upon (i) approval of this PILOT Agreement by the Metropolitan Council as required by the PILOT Ordinance, (ii) Owner's satisfaction of all conditions and requirements imposed by MDHA in connection this PILOT Agreement or the transaction contemplated herein, (iii) MDHA taking title to the Property and entering into a mutually acceptable Project Lease, and (iv) THDA's approval of the Project and allocation of low income housing tax credits, to the extent such approval or allocation has not been received as of the date of this PILOT Agreement.

8. MDHA shall remit all In Lieu of Tax Payments received in connection with the Project and/or the Project Lease to the Metropolitan Government within fifteen (15) days of receipt.

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

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY

By: 

Title: Executive Director

Flats at Hickory Woods, LP

By: 

Title: Authorized Member

FILED WITH THE METROPOLITAN CLERK

\_\_\_\_\_  
Austin Kyle

\_\_\_\_\_  
Date

EXHIBIT A

**PARCEL 80.00:**

Land in the 2<sup>nd</sup> Civil District of Davidson County, Tennessee being part of the same property of record in Book 669, page 18 and Book 682, page 760 and being known as

**ORDER NO.: 180435**

Map 175, Parcel 80, according to the Davidson County Tax Assessor's Office.

**SURVEY DESCRIPTION TO FOLLOW.**

Being part of the same property conveyed to ROBERT H. BONDS AND JIM WOODALL, by deed from JOSEPH R. WEST, CLERK AND MASTER, DAVIDSON COUNTY, TENNESSEE, of record in Book 669, page 18, dated July 25, 1925, said Register's Office. JIM WOODALL AND WIFE, MAUDE WOODALL conveyed their interest to R.H. BONDS, a/k/a ROBERT H. BONDS, by deed of record in Book 682, page 760, dated November 30, 1925, said Register's Office. ROBERT H. BONDS died testate on or about December 12, 1983. Said property passes outside the will of ROBERT H. BONDS which is of record in Docket No. 74298 in the Seventh Circuit Court for Davidson County, Tennessee, Probate Division. See Affidavit of Heirship of record as Instrument No. \_\_\_\_\_, said Register's Office, stating that WILLIAM H. BONDS AND NELLIE BONDS THRONEBERRY are his only heirs-at-law.

WILLIE H. BONDS, SR., A/K/A WILLIAM H. BONDS died testate on or about March 5, 2007, devising his portion of said property to MADELYN B. BONDS, WILLIE H. BONDS, JR., BEVERLY BONDS CARLTON AND JOYCE ANN BONDS by will of record in Docket No. 07P1262 in the Seventh Circuit Court for Davidson County, Tennessee, Probate Office.

THELMA MADELYN BONDS a/k/a MADELYN B. BONDS died intestate on or about September 22, 2015, leaving WILLIE H. BONDS, JR., JOYCE BONDS WALL AND BEVERLY BONDS CARLTON as her only heirs-at-law. For further reference see Affidavit of Heirship of record in Instrument No. \_\_\_\_\_, said Register's Office. For further reference see Administrator's quitclaim deed of record in Instrument No. 20160922-0100021, dated September 22, 2016, said Register's Office.

NELLIE BONDS THRONEBERRY died testate on or about July 12, 2012, devising her portion of said property to DONALD MCKINLEY BONDS, SR., by will of record in Docket No. 13P1502 in the Seventh Circuit Court for Davidson County, Tennessee, Probate Division.

**PARCEL 81.00:**

Land in the 2<sup>nd</sup> Civil District of Davidson County, Tennessee, described according to a certificate of survey, dated May 31, 1962, made by Eugene R. Hargis, Surveyor, for Rutherford County, Tennessee, as follows:

Starting at a stake in the southwest margin of the Nashville to Murfreesboro Highway (Highway 41) being approximately 1,085 feet northwest of the Davidson-Rutherford County line along the southwest margin of the above mentioned Highway, and being 250 feet along the margin of the Highway from the intersection of the center of Church Road and the southwest margin of the above mentioned Highway; thence S 46 degrees 45

**ORDER NO.: 180435**

minutes E along the southwest margin of the above mentioned Highway, 150 feet to a stake; thence S 39 degrees 45 minutes West 163.6 feet to a stake; thence S 46 degrees 45 minutes East 149 feet to another stake; thence S 42 degrees West 314.2 feet to a stake in the center of a field; thence W 88 degrees West 44.5 feet to another stake; thence N 6 degrees East 436.5 feet to a corner post; thence N 41 degrees 30 minutes East 163.6 feet to the point of beginning containing 2.31 acres, more or less.

Being part of the same property conveyed to ROBERT H. BONDS AND JIM WOODALL, by deed from JOSEPH R. WEST, CLERK AND MASTER, DAVIDSON COUNTY, TENNESSEE, of record in Book 669, page 18, dated July 25, 1925, said Register's Office. JIM WOODALL AND WIFE, MAUDE WOODALL conveyed their interest to R.H. BONDS, a/k/a ROBERT H. BONDS, by deed of record in Book 682, page 760, dated November 30, 1925, said Register's Office.

ROBERT H. BONDS AND WIFE, MABEL A. BONDS, conveyed said property to NELLIE BONDS THRONEBERRY, by deed of record in Book 3536, page 85, dated April 27, 1963, said Register's Office. NELLIE BONDS THRONEBERRY died testate on or about July 12, 2012, devising said property to DONALD MCKINLEY BONDS, SR., by will of record in Docket No. 13P1502, in the Seventh Circuit Court for Davidson County, Tennessee, Probate Division.

DONALD BONDS is a/k/a DONALD M. BONDS AND DONALD MCKINLEY BONDS.

**PARCEL 170.00:**

Land in the 2<sup>nd</sup> Civil District of Davidson County, Tennessee, being part of the same property of record in Book 669, page 18 and Book 682, page 760 and being known as Map 175, Parcel 170, according to Davidson County Tax Assessor's Office.

**SURVEY DESCRIPTION TO FOLLOW.**

Being part of the same property conveyed to ROBERT H. BONDS AND JIM WOODALL, by deed from JOSEPH R. WEST, CLERK AND MASTER, DAVIDSON COUNTY, TENNESSEE, of record in Book 669, page 18, dated July 25, 1925, said Register's Office. JIM WOODALL AND WIFE, MAUDE WOODALL conveyed their interest to R.H. BONDS, a/k/a ROBERT H. BONDS, by deed of record in Book 682, page 760, dated November 30, 1925, said Register's Office. ROBERT H. BONDS died testate on or about December 12, 1983, devising said property to GARY BONDS AND DONALD BONDS, by will of record in Docket No. 15P1927, in the Seventh Circuit Court for Davidson County, Tennessee, Probate Division.

GARY DURAND BONDS AND WIFE, LORETTA BONDS conveyed their interest in said property to WILLIAM HARDIN BONDS AND WIFE, MADELYN BONDS, by deed of record in Book 7489, page 972, dated February 17, 1988, said Register's Office. WILLIAM HARDIN BONDS died on or about March 5, 2007, leaving MADELYN

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice, the Commitment to Issue Policy, the Commitment Conditions, Schedule A, Schedule B, Part I - Requirements, and Schedule B, Part II - Exceptions.

ORY FORM 46904720A 6/06 Revised 6-1-16  
ALTA Commitment for Title Insurance

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METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY  
Planning Department  
Metro Office Building  
800 Second Avenue South  
Nashville, Tennessee 37201  
615.862.7150  
615.862.7209

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# Memo

**To:** MDHA  
**From:** Metropolitan Nashville Planning Department  
**Date:** May 12, 2022  
**Re:** Planning Commission Recommendation for PILOT Agreement

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This memo fulfills the Planning Commission obligations as outlined in the MDHA Housing Tax Credit PILOT Program General Program Description which was attached as Exhibit A to BL2016-435. The memo consists of two parts.

## **PART I: RECOMMENDATION ON GENERAL PLAN CONSISTENCY**

**Project:** **Hickory Woods (Map 175 Parcels 170, 080, 081, 190, 216)**  
88 multi-family residential units  
All units targeting 50%, 60%, and 70% AMI

**Zoning:** Specific Plan-Residential (SP-R) is a zoning district category that provides for additional flexibility of design, including the relationship of streets to buildings, to provide the ability to implement the specific details of the General Plan. This Specific Plan includes only one residential building type. *The site is located within the Murfreesboro Pike Urban Design Overlay (UDO).*

**Policy:**

T3 Suburban Community Center (T3 CC) is intended to enhance and create suburban community centers that serve suburban communities generally within a 10 to 20 minute drive. They are pedestrian friendly areas, generally located at prominent intersections that contain mixed use, commercial and institutional land uses, with transitional residential land uses in mixed use buildings or serving as a transition to adjoining Community Character Policies. T3 CC areas are served by highly connected street networks, sidewalks and existing or planned mass transit leading to surrounding neighborhoods and open space. Infrastructure and transportation networks may be enhanced to improve pedestrian, bicycle, and vehicular connectivity.

Conservation (CO) is intended to preserve environmentally sensitive land features through protection and remediation. CO policy applies in all Transect Categories except T1 Natural, T5 Center, and T6 Downtown. CO policy identifies land with sensitive environmental features including, but not limited to, steep slopes, floodway/floodplains, rare or special plant or animal habitats, wetlands, and unstable or problem soils. The guidance for preserving or enhancing these features varies with what Transect they are in and whether or not they have already been disturbed.

**Project Details:**

The site is approximately five acres located on the west side of Murfreesboro Pike, generally south of the intersection of Couchville Pike and Murfreesboro Pike.

The site is zoned Specific Plan (SP) which was approved in 2006 for approximately 56 acres. The SP covered a large geographic area that was intended to develop incrementally and create a wholistic development across the entire bounds of the SP. This portion of the SP was identified as subdistrict 3 which is intended to be developed with live/work uses, townhouses, townhouse courts, stacked flats, and courtyard stacked flats.

The proposed site plan shows four three-story structures of garden style apartments with a total of 88 units. Forty-four of the units will be two-bedroom units and the remaining half will be three bedroom units. Additional amenities include in-unit washer dryers, a community room, picnic area, and a playground. According to the submitted material, all units will target various AMI levels ranging from 50 percent to 70 percent of AMI.

**Planning Department Analysis:**

There are two policies on the site. The primary policy on the site is Suburban Community Center (T3 CC). Create and enhance suburban community centers encouraging their development or redevelopment as intense mixed use areas that are compatible with the general character of suburban neighborhoods as characterized by the service area, development pattern, building form, land use, and associated public realm. The development is located with proximity to the Murfreesboro Pike corridor. While the site does not have frontage along Murfreesboro Pike, the development surrounding the corridor is intended to contribute to the nature of a suburban community center, which includes a balance of residential and non-residential uses. For sites without frontage along the corridor and proximity to these community centers, residential developments are supported.

The second policy on the site is Conservation (CO) which is located at the southeast portion of the site, where the floodplain is located. The intent of this policy to preserve and reduce impacts to environmentally sensitive land features. Material submitted with the application indicate ongoing work to meet Metro regulations for developments within the floodplain, including reducing units and raising foundations.

**Planning Determination:** The existing development on the site is consistent with the policies on the site to provide residential development at a suburban level and along key corridors throughout the county. This project is consistent with the NashvilleNext adopted general plan and the Community Character Policies.

**PART II: LIST OF FEDERALLY SUBSIDIZED MULTI-FAMILY PROPERTIES WITHIN THE CENSUS TRACT**

See attached map.

# Certification of Consistency with the Consolidated Plan

U.S. Department of Housing  
and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.  
(Type or clearly print the following information:)

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

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

Location of the Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of the Federal  
Program to which the  
applicant is applying: \_\_\_\_\_

Name of  
Certifying Jurisdiction: \_\_\_\_\_

Certifying Official  
of the Jurisdiction  
Name: \_\_\_\_\_

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_