

## **PILOT AGREEMENT**

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 1st day of August, 2023, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and Charter Village Preservation, L.P. (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 333 Rio Vista Drive, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to rehabilitate a 250 unit apartment project, known as Charter Village, 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	\$186,079
2	\$191,661
3	\$197,411
4	\$203,334
5	\$209,434
6	\$215,717
7	\$222,188
8	\$228,854
9	\$235,719
10	\$242,791

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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 \$744 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:  DocuSigned by:  
Troy D. White  
1CA327FEFF2844E...

Title: Executive Director

**Charter Village Preservation, L.P.**

By: 

**David Pearson**

Title: Vice President of the General Partner

**FILED WITH THE METROPOLITAN CLERK**

Austin Kyle

Date

**EXHIBIT A**

LAND IN THE 9TH COUNCILMANIC DISTRICT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE, BEING LOT 1 ON THE PLAN OF RIO VISTA APARTMENTS - RIO VISTA DRIVE DEDICATION, RECORDED IN PLAT BOOK 4460, PAGE 144, REGISTER'S OFFICE FOR SAID COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A CONCRETE MONUMENT AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY OF ANDERSON LANE AND THE WEST RIGHT OF WAY OF RIO VISTA DRIVE; THENCE ALONG SAID RIO VISTA DRIVE S 27 DEG. 53' 00" E, 1477.83 FEET; THENCE CONTINUING ALONG SAID RIO VISTA DRIVE S 33 DEG. 30' 00" E, 370.61 FEET TO A CONCRETE MONUMENT AT THE NORTHEAST CORNER OF RESERVED PARCEL "B" SHOWN ON THE PLAN OF ARCHWOOD ANNEX, RECORDED IN BOOK 6200, PAGE 66, R.O.D.C.; THENCE LEAVING SAID RIO VISTA DRIVE S 60 DEG. 07' 16" W, 576.47 FEET TO A CONCRETE MONUMENT; THENCE N 33 DEG. 37' 13" W, 239.98 FEET TO A CONCRETE MONUMENT; THENCE N 84 DEG. 26' 15" W, 396.57 FEET TO A CONCRETE MONUMENT; THENCE N 04 DEG. 53' 51" E, 219.91 FEET TO THE SOUTH RIGHT OF WAY OF ROOSEVELT AVENUE; THENCE ALONG SAID ROOSEVELT AVENUE S 85 DEG. 06' 09" E, 62.10 FEET TO THE EAST TERMINUS OF SAID ROOSEVELT AVENUE; THENCE N 01 DEG. 55' 15" E, 50.07 FEET TO THE NORTHEAST TERMINUS OF ROOSEVELT AVENUE; THENCE ALONG THE NORTH RIGHT OF WAY OF ROOSEVELT AVENUE N 85 DEG. 06' 09" W, 59.50 FEET TO THE SOUTHEAST CORNER OF LOT 58 ON THE PLAN OF ARCHWOOD ACRES, SECTION ONE, RECORDED IN PLAT BOOK 2133, PAGE 120, R.O.D.C.; THENCE LEAVING SAID ROOSEVELT AVENUE N 04 DEG. 53' 51" E, 200.00 FEET TO A CONCRETE MONUMENT; DocuSign Envelope ID: BC7267C9-63EC-48CD-B5BB-F5391D8FC60C THENCE N 50 DEG. 45' 43" E, 68.65 FEET TO A CONCRETE MONUMENT; THENCE CONTINUING ALONG THE EASTERLY LINE OF SAID ARCHWOOD ACRES, SECTION ONE, N 01 DEG. 54' 36" E, 508.88 FEET; THENCE N 27 DEG. 08' 14" W, 361.45 FEET TO AN IRON PIPE IN THE SOUTHERLY LINE OF ARCHWOOD ACRES, SECTION TWO, RECORDED IN PLAT BOOK 2331, PAGE 12, R.O.D.C., THENCE N 67 DEG. 17' 28" E, 193.04 FEET TO THE SOUTHEAST CORNER OF LOT 44 SHOWN ON SAID PLAN OF ARCHWOOD ACRES, SECTION TWO; THENCE ALONG THE EAST LINE OF SAID LOT 44 N 01 DEG. 54' 36" E, 247.94 FEET TO THE POINT OF BEGINNING AND CONTAINING 21.18 ACRES, MORE OR LESS, DESCRIBED ACCORDING TO THE ALTA/ACSM LAND TITLE SURVEY, DATED APRIL 2, 2007, PREPARED BY PATRICK S. COODE, TENNESSEE RLS 855, JOHN KOHL AND COMPANY, P.C., 400 SEVENTH AVENUE, SOUTH, NASHVILLE, TENNESSEE 37203, PROJECT NO. 6570.001. Being the same property conveyed to CV I, L.P., a Tennessee limited partnership by Warranty Deed from National Homes Trust XII, Inc., a District of Columbia nonprofit corporation of record in Instrument 200704050040960, Register's Office for Davidson County, Tennessee.



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:** June 28, 2023  
**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:** **Charter Village Preservation** (04311019000), 330 Rio Vista Drive  
250 multi-family units  
Units targeting 30% to 60% AMI

**Zoning:** RS7.5 requires a minimum 7,500 square foot lot and is intended for single-family dwellings at a density of 4.94 dwelling units per acre. *RS7.5 would permit a maximum of 105 units. This property has been developed as a multi family since prior to 1960 and the use is grandfathered.*

### **Policy:**

T3 Suburban Neighborhood Maintenance (T3 NM) is intended to maintain the general character of developed suburban residential neighborhoods. T3 NM areas will experience some change over time, primarily when buildings are expanded or replaced. When this occurs, efforts should be made to retain the existing character of the neighborhood. T3 NM areas have an established development pattern consisting of low- to moderate-density residential development and institutional land uses. Enhancements may be made to improve pedestrian, bicycle, and vehicular connectivity.

### **Project Details:**

Charter Village is a 250 unit multifamily apartment community located in Madison, TN. The properties directly north and south are zoned RS7.5 but the existing multi family development extends to 272 Rio Vista Drive and 920 Anders Drive. The property is bordered by the Cumberland River to the east and multi family development



to the west that is zoned RS7.5. The existing buildings were built in 1975 and renovated in 2007. It is serviced by a transit route with a stop directly outside the property.

This project does not include additional units. It is a rehabilitation of units that exists. Rehabilitation of units will include interior renovations and public amenity improvements.

The Property is currently subject to two regulatory agreements, which provide for income and rent restrictions. The Second Amended and Restated Tax Regulatory Agreement, which is an agreement between the current owner and The Health and Educational Facilities Board of The Metropolitan Government of Nashville and Davidson County, Tennessee, restricts 40% of the units at 60% of area median income (“AMI”). There is also an in place Declaration of Land Use Restrictive Covenants between the current owner and Tennessee Housing Development Agency (“THDA”) which restricts 100% of the units at 60% of AMI and further restricts 10% of units at 50% of AMI. Both existing agreements have a thirty-year term which expire in 2037. In connection with the proposed project, the owner would enter into new thirty-year regulatory agreements at closing to extend the income and rent restrictions through at least 2053. In addition to the existing financing and LIHTC restrictions, 210 units at the Property receive rental subsidy from a Project- based Section 8 Housing Assistance Payments (“HAP”) contract. The HAP provides for residents in those units to pay 30% of their adjusted household income towards rent. The existing HAP contract is set to expire in 2032 and as part of the proposed project, the Proposed Owner would seek to renew that HAP for the maximum term of 20-years from closing

#### **Planning Department Analysis:**

According to the T3 NM policy, some change will occur over time, but efforts should be made to retain the existing character of the neighborhood, in terms of its development pattern, building form, land use and the public realm. The proposal does maintain the existing pattern, form, and use of the parcel. The project is interior renovations and open space improvements.

**Planning Determination:** The proposed development 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: Emel Alexander

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