

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 18 day of October, 2024, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and EC Burning Tree, LLC (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 has acquired land located at 345 Burning Tree Drive, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to develop a 280 unit apartment project, known as Burning Tree, 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 (10th) Tax Year, (ii) rehabilitate 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 rehabilitation 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 rehabilitate 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 rehabilitation of the Project is completed.

(b) Commencing on January 1st 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 (10th) Tax Year, in Lieu of Tax Payments shall be as follows:

1	\$224,678
2	\$231,419
3	\$238,361
4	\$245,512
5	\$252,878
6	\$260,464
7	\$268,278
8	\$276,326
9	\$284,616
10	\$293,154

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 \$802 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 (10th) Tax Year, Owner shall provide to MDHA an annual report not later than September 1st 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 (10th) 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:  Signed by: Troy D. White
1CA327FEFF2844E...

Title: Executive Director

EC Burning Tree, LLC

By: EC Burning Tree M, LLC
Its: Managing Member

By:  DocuSigned by: Ty Tyson
3EFEBD55A0CF45F...

Title: SVP

FILED WITH THE METROPOLITAN CLERK

Austin Kyle

Date

EXHIBIT A

EXHIBIT A

DESCRIPTION OF PREMISES

Being a parcel of land in the Twelfth Councilmanic District of Nashville, Davidson County, located at the northeast corner of Old Hickory Boulevard and Central Pike being more particularly described as follows:

BEGINNING at a point in the easterly margin of Old Hickory Boulevard, said point being approximately 445 feet northerly along said margin from the northerly margin of Central Pike Thence, leaving said margin of Old Hickory Boulevard with the easterly line of Davco-O.H. Blvd Properties of record in Deed Book 9159, page 798, R.O.D.C., N 05 degrees 44' 57" E, 461.96 feet to a concrete monument; Thence, N 04 degrees 41' 11" E 516.13 feet to an iron pin in the southerly line of Robert E. Earheart, of record in Deed Book 5637, page 759, R.O.D.C.; Thence, with said line of Earheart, S 57 degrees 36' 57" E, 780.96 feet to an iron pin; Thence, S 65 degrees 48' 20" E, 286.95 feet to an iron pin in the westerly line of The Gleaves Family Partnership of record in Instrument Number 20011220-140875, R.O.D.C.; Thence, with said Gleaves, S 03 degrees 30' 41" W, 1001.43 feet to an iron pin; Thence, leaving said Gleaves, with the north line of Ricky McClintock, of record in Instrument Number 20040625-75481, R.O.D.C., N 83 degrees 14' 13" W, 234.55 feet to a corner post; Thence continuing with said McClintock of record in Instrument Number 20040625-75481, R.O.D.C., N 83 degrees 48' 55" W, 193.53 feet to an angle iron; Thence, S 12 degrees 27' 05" W, 110.99 feet to a point in the northerly margin of Central Pike; Thence, with said margin, and a curve concave to the north having a central angle of 04 degrees 31' 39" ,a radius of 1072.93 feet and a chord of N 62 degrees 43' 17" W, 84.76 feet for an arc length of 84.78 feet to a point; Thence, leaving said Central Pike, with the property of Teachers Retirement System of Kentucky of record in Instrument Number 20000825-84161, R.O.D.C., the following calls:

N 29 degrees 41' 29" E, 178.00 feet to a point;

N 19 degrees 00' 00" W, 233.00 feet to a point;

N 70 degrees 30' 00" W, 50.00 feet to a point;

Thence along or near the northerly line of Ilene Gibbs of record in Instrument Number 2003082-121786, R.O.D.C., the following call:

N 50 degrees 00' 00" W, 230.00 feet to a point;

N 73 degrees 22' 05" W, 52.47 feet to a point;

S 66 degrees 29' 22" W, 140.00 feet to a point in the easterly margin of Old Hickory Boulevard;

Thence, with said margin and a curve concave to the west having a central angle of 01 degrees 47' 31" a radius of 2939.79 feet and a chord of N 23 degrees 28' 07" W, 91.94 feet for an arc length of 91.94 feet to the point of beginning, containing 985,215 square feet or 22.62 acres, more or less.

Cemetery:

Security Instrument (Deed of Trust)
4854-6982-9381.5

Exhibit A

Included in the above described property but expressly excluded therefrom is the following described Gleaves Cemetery:

The Point of Beginning of said cemetery lies S 67 degrees 18' 12" E, 359.93 feet from the concrete monument at the end of the first call of the above described property:

Thence with a fence, N 02 degrees 53' 41" E, 104.29 feet to a point;

Thence N 89 degrees 58' 32" E, 127.93 feet to a point;

Thence S 04 degrees 26' 20" W, 115.53 feet to a point;

Thence N 84 degrees 57' 11" W, 124.74 feet to the point of beginning, containing 13,835 square feet or

0.32 acres, more or less.

TOGETHER WITH a perpetual nonexclusive easement (Easement 3) for ingress and egress as granted to Burning Tree Associates, Ltd. by Deed of Record in Book 5553, page 20, said Register's Office, and being described as follows:

Beginning at a point, said point being 358.16 feet along the easterly margin of Old Hickory Boulevard from the intersection with the northerly margin of Central Pike; thence, North 66 degrees 29' 22" East, a distance of 140.00 feet; thence, South 73 degrees 22' 05" East, a distance of 52.47 feet; thence, South 50 degrees 00' 00" East, a distance of 90.00 feet to the point of beginning; thence, South 40 degrees 55' 20" East, a distance of 82.53 feet to a point; thence South 50 degrees 00' 00" East, a distance of 50.00 feet to a point; thence South 70 degrees 30' 00" East, a distance of 70.00 feet to a point; thence North 19 degrees 00' 00" West, a distance of 12.00 feet to a point; thence North 70 degrees 30' 00" West, a distance of 50.00 feet to a point; thence, North 50 degrees 00' 00" West, a distance of 140.00 feet to the point of beginning and containing 1,796 square feet or 0.04 acre.

TOGETHER WITH Easements to Burning Tree Associates, Ltd., as set forth in instruments recorded in Book 5193, page 821 and Book 5194, Page 548, in said Register's Office, as shown on the survey.

Being the same property conveyed to EC Burning Tree Acquisition, LLC, a Tennessee limited liability company, from Burning Tree TN, L.P., a Tennessee limited partnership, by Special Warranty Deed of record as Instrument No. ~~20211229-017085~~ 20211229-017085 in the Register's Office for Davidson County, Tennessee. The description of the Property was obtained from a survey dated November 30, 2021, last revised December 17, 2021, prepared by Alan Cummings of Crawford & Cummings, P.C., whose address is 8161 Hwy. 100, Suite 163, Nashville, Tennessee 37221, Project No. 2021217-077.

Security Instrument (Deed of Trust)
4854-6982-9381.5

Exhibit A

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: _____



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

Memo

To: MDHA
From: Metropolitan Nashville Planning Department
Date: September 12, 2024
Re: Planning Commission Recommendation for PILOT Agreement

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: the staff recommendation and a map.

PART I: RECOMMENDATION ON GENERAL PLAN CONSISTENCY

Project: **EC Burning Tree, LLC (08600023700, 345 Burning Tree Drive)**
280 multi-family units
Units targeting 60% of the Area Median Income (AMI)

Zoning: Planned Unit Development Overlay District (PUD) is an alternative zoning process that allows for the development of land in a well-planned and coordinated manner, providing opportunities for more efficient utilization of land than would otherwise be permitted by the conventional zoning provisions of Title 17. The PUD district may permit a greater mixing of land uses not easily accomplished by the application of conventional zoning district boundaries, or a framework for coordinating the development of land with the provision of an adequate roadway system or essential utilities and services. In return, the PUD district provisions require a high standard for the protection and preservation of environmentally sensitive lands, well-planned living, working, and shopping environments, and an assurance of adequate and timely provision of essential utilities and streets.

Multi-Family Residential RM15 is intended for single-family, duplex, and multi-family dwellings at a density of 15 dwelling units per acre.

Policy:

T3 Suburban Neighborhood Evolving (T3 NE) is intended to create and enhance suburban residential neighborhoods with more housing choices, improved pedestrian, bicycle and vehicular connectivity, and moderate density development patterns with moderate setbacks and spacing between buildings. T3 NE policy may be applied either to undeveloped or substantially under-developed “greenfield” areas or to developed areas where redevelopment and infill produce a different character that includes increased housing diversity and connectivity. Successful infill and redevelopment in existing neighborhoods need to consider factors such as timing and some elements of the existing developed character, including the street network, block structure, and proximity to centers and corridors. T3 NE areas are developed with creative thinking in environmentally sensitive building and site development techniques to balance the increased growth and density with its impact on area streams and rivers.

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 which Transect they are in and whether they have already been disturbed.

Project Details:

The site is 22.25 acres located north of Central Pike, an Arterial Boulevard. The project is an existing development with fourteen 3-story buildings and nine 2 story buildings along Burning Tree Drive. There are 280 flat apartments with one, two, and three bedrooms each with balcony access. Surface parking exist surrounding each of the buildings. A pool and clubhouse, picnic area and playground are provided as amenities for residents. Public wi-fi is provided in the business center and pool area.

Planning Department Analysis:

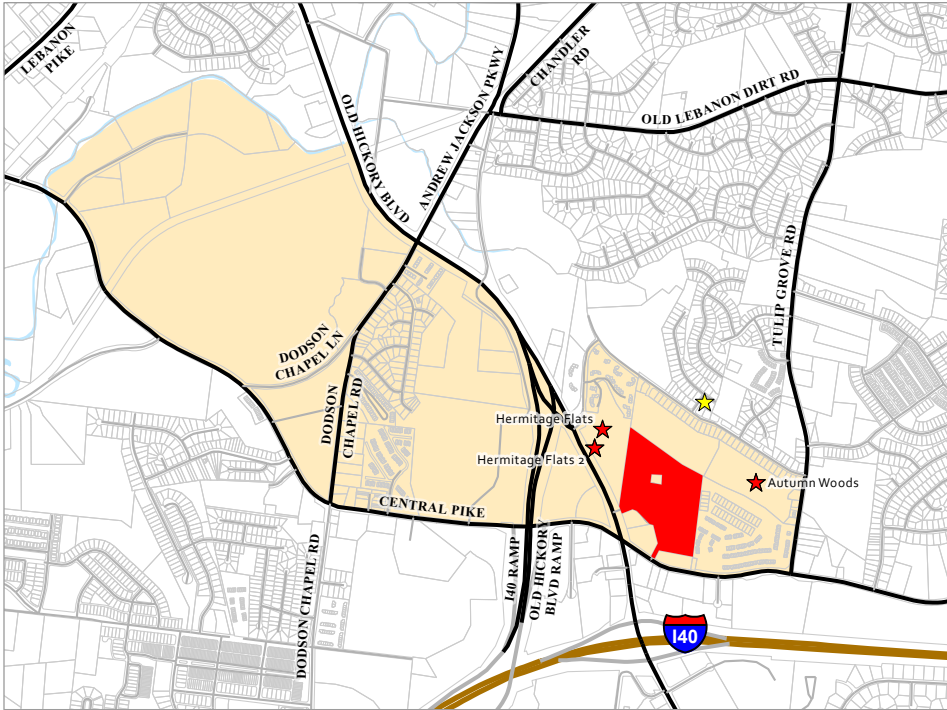
The plan is consistent with the proposed T3 NE and CO policies. The T3 NE policy is intended to create and enhance suburban residential neighborhoods with more housing choices, improved pedestrian, bicycle and vehicular connectivity, and moderate density development patterns with moderate setbacks and spacing between buildings. The existing development provides a multifamily housing choice in the area. The CO policy is intended to preserve environmentally sensitive land features through protection and remediation. CO policy applies to the floodplain/stream buffers and the areas of steep slope on the property in excess of 25%. There will not be new disturbance of slopes.

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.

Federally Subsidized Multi-Family Projects within Census Tract 470370156233



- ★ Federal Affordable Housing units in Tract
- ★ Other Federal Affordable Housing Units
- Parcel 08600023700 (345 Burning Tree Drive)
- Tract 470370156233

Development Name	Total Units
Hermitage Flats	184
Autumn Woods	84
Hermitage Flats 2	265

Source :
 US Census Bureau
 &
 Nashville Planning
 October 2024

