

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

THIS AGREEMENT is made and entered into as of this the ____ day of May, 2005, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE** (the "Board"); **LOFTS AT 160, LLC** ("Entity"); and the **METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE** ("Metro"); and is joined in, for purposes of evidencing its acceptance of the agency relationship established herein, by **CHARLES CARDWELL** and his successors, acting in the capacity of **METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY TRUSTEE** ("Trustee").

W I T N E S S E T H:

WHEREAS, Entity is contemplating the construction and development of apartment units in a Certified Historic Structure on property located in Nashville, Davidson County, Tennessee (the "Project"), and has requested the Board's assistance in the financing of the Project; and

WHEREAS, substantial economic benefits to Nashville's Central Business District (as defined in Metro Ordinance No. BL 2003-1533) will be derived from the Project; and

WHEREAS, the Board has agreed to take title to certain property constituting a part of the Project, as described in Exhibit "A" attached hereto (the "Property"), which Property is to be owned by the Board and leased to Entity; and

WHEREAS, because the Property is to be owned by the Board, which is a public corporation organized under the provisions of Tennessee Code Annotated, §7-53-101, et seq., all

such property will be exempt from ad valorem property taxes ("property taxes") normally paid to Metro, so long as the Property is owned by the Board, pursuant to the provisions of Tennessee Code Annotated, § 7-53-305; and

WHEREAS, for the public benefit of the citizens of Metro, the Board has requested that the Entity make certain payments to the Board in lieu of the payment of property taxes that would otherwise be payable on the Property; and

WHEREAS, the Entity has agreed to make such payments to the Board in lieu of the property taxes otherwise payable on the Property (the "In Lieu Payments"), as more particularly set forth hereinafter; and

WHEREAS, the Board has been authorized to receive the In Lieu Payments in lieu of property taxes by resolution adopted by the Metropolitan Council of Nashville and Davidson County, Tennessee (the "Metro Council"), acting through their duly elected officials, which resolution delegates to the Board the authority to accept the In Lieu Payments upon compliance with the provisions of state law, the terms of the Downtown PILOT Program General Program Descriptions attached hereto and incorporated herein by reference as Exhibit "B" and for the public purpose of increasing downtown development activity; and

WHEREAS, Entity and the Board have agreed that all In Lieu Payments made to the Board by Entity shall be paid to the Trustee, who shall disburse such amounts to the general funds of Metro in accordance with the requirements specified herein; and

WHEREAS, the Board wishes to designate the Trustee its agent to receive the In Lieu Payments in accordance with the terms of this Agreement;

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

1. Appraisal and Assessment of Property. The Property shall be appraised and assessed by the Assessor's Office in accordance with the Constitution and laws of the State of Tennessee as though the Property were subject to property taxes. Notice of any changes in appraisals of the Property shall be given to Entity in the same manner that notices are given to owners of taxable property. All records relating to the appraisal and assessment of the Property shall be made available to the Board and Entity.

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

3. Payments in Lieu of Taxes. After receipt of the Tax Bill, Entity shall pay to Trustee the amounts indicated on the Tax Bill in accordance with the amount set forth below in Paragraph 4. The In Lieu Payments shall be made by Entity in lieu of the property taxes which would otherwise be payable on the Property if it were subject to property taxes.

4. Amount of Payments by Entity.

(a) For any period hereunder occurring before January 1, 2005 or after December 31, 2012, and during which the Property is owned by the Board, Entity shall make In Lieu Payments in an amount, as determined by the most current property assessment and the

Trustee, equal to the taxes that would have been payable on the Property if it were subject to property taxes.

(b) For each of the years 2005 through 2012 Entity shall make In Lieu Payments in an amount equal to Thirty-Two Thousand Two Hundred Fifty-Nine and 26/100 Dollars (\$32,259.26) per year, provided, however, that in no such year shall said amount be less than the lesser of:

(i) the amount of ad valorem taxes that would otherwise be due and payable by a tax paying entity upon the current fair market value of the Property; or

(ii) the amount of ad valorem taxes that were or would have been due and payable on the Property for the period immediately preceding the date on which the Property was acquired by the Board.

In the event that the said amount of In Lieu Payment for any given year of 2005 through 2012 is less than the lesser of the amounts described above in items (i) and (ii), then the amount of In Lieu Payment to be paid by Entity for said year shall be in an amount equal to the lesser of the amounts described in items (i) and (ii).

(c) If the term of this Agreement does not begin or end on a date corresponding with the beginning or end of a calendar year, then the amount of the In Lieu Payment during such year will be prorated by multiplying the amount of the In Lieu Payment by a fraction the numerator of which is the number of days during such calendar year in which the Entity occupies the Property and the denominator of which is 365.

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

(a) If Entity fails to make any In Lieu Payment when due, and such failure to pay shall continue and not be fully paid within thirty (30) days after written notice of such non-payment has been provided, then such payment shall bear interest at the rate of ten percent (10%) per annum of the owed amount, for each month that each payment has been unpaid. Such interest shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If Entity should fail to pay all amounts and interest due as provided hereinabove, then the Board may bring suit in the Chancery Court of Davidson County to recover the In Lieu Payments due, interest, expenses and costs of collection in addition to reasonable attorneys' fees.

6. Disbursements by Trustee. All sums received by the Trustee pursuant to Paragraph 3 shall be disbursed to the general funds of Metro in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All disbursements to the general funds of Metro shall be made by the Trustee subject to the requirement that all funds disbursed may be used by Metro only in furtherance of the public purposes of the Board, as described in Tennessee Code Annotated, § 7-53-102.

7. Contest by Entity. Entity shall have the right to contest the appraisal or assessment of the Property by the Assessor's Office and the computation by the Trustee of the amount of the In Lieu Payment. If Entity contests any such appraisal or assessment, then it shall present evidence to the Assessor's Office in favor of its position. Likewise, if Entity contests any such computation, it shall present evidence to the Trustee in favor of its position. If the In Lieu Payments being contested shall be or become due and payable, Entity shall make such

payments under protest. If Entity and the Trustee are unable to resolve a dispute, then Entity may file suit in the Chancery Court of Davidson County to ask that the provisions of this Agreement, including those covering computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute. Entity shall have the right to contest the appraisal or assessment of the Property by the Assessor's Office in accordance with applicable Tennessee law and administrative procedures.

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

9. Term. This Agreement shall become effective on the date that the Board attains title to the Property and shall continue for a period of up to seven (7) years so long as the Board holds title to the Property and Entity has made all payments required hereunder.

10. Leasehold Taxation. If the leasehold interest of Entity should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder.

11. Notices, etc. All notices and other communications provided for hereunder shall be written (including facsimile transmission and telex), and mailed or sent via facsimile transmission or delivered:

If to Board:

c/o Nattie Scalf
101 Shepard Hills Drive
Madison, Tennessee 37115
Fax: (615) 859-7934

With a Copy to:

Bobby D. Davis
101 Shepard Hills Drive
Madison, Tennessee 37115

if to Metro:

c/o David L. Manning
Director of Finance
225 Polk Avenue
Suite 250
Nashville, TN 37203
Fax: (615) 862-6156

if to Entity:

c/o The Mathews Company
300 Broadway
Nashville, Tennessee 37201
Fax: 615-255-3431

With Copy to:

Guilford Capital Corporation
2600 E. South Boulevard
Suite 230
Montgomery, Alabama 36116
Attn: H. B. Upchurch, Exec. VP
Fax: 334-281-9488

if to the Trustee:

c/o Charlie Cardwell
Metropolitan Trustee
800 2nd Avenue North
Nashville, Tennessee 37201
Fax: (615)862-6337

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

12. No Waiver; Remedies. No failure on the part of any party hereto, and no delay in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single

or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

13. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court or jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions of this Agreement.

14. No Liability of Board's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, of the Board, whether past, present or future, either directly or through the Board. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

15. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and signatories hereto and to their respective successors and assigns.

16. Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

17. Breach Under this Agreement or Lease Agreement: Any breach by Entity under the terms of this Agreement that is not remedied within any grace period provided herein shall constitute a breach by Entity under that certain lease agreement (the "Lease Agreement") of even date herewith entered into by and between the Board and Entity. Any breach by Entity under the terms of the Lease Agreement that is not remedied within any grace period provided therein shall likewise constitute a breach under this Agreement.

18. Amendments. This Agreement may be amended only in writing, signed by each of the parties hereto, except that the Trustee shall not be required to join in amendments unless such amendments affect its respective duties hereunder.

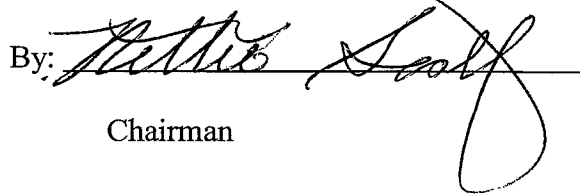
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

ATTEST:



Secretary

THE INDUSTRIAL DEVELOPMENT BOARD

By: 

Chairman

~~THE~~ LOFTS AT 160, LLC

By: _____

Title: _____

METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

By: _____

Bill Purcell, Mayor

ACKNOWLEDGED AND ACCEPTED
AS TO AGENCY RELATIONSHIPS:

DAVIDSON COUNTY TRUSTEE

Charles Caldwell, Davidson County Trustee

Exhibit A

Project Description

Name:	The Lofts at 160
Address:	160 2 nd Avenue North Nashville, Tennessee
Parcel ID:	093 06 2 069.00
Owner:	The Lofts at 160, LLC PO Box 22149 Nashville, TN 37202
Total Number of Units:	32 (proposed)
# Affordable Units:	6
Size:	600-1,200 square feet
Architect:	Tuck Hinton Architects
Construction:	RC Mathews Contractors
Total Project Costs:	\$5,500,000 (est)

Exhibit B

Downtown PILOT Program General Program Description

- The maximum allowable term for a PILOT lease shall be between five (5) and seven (7) years.
- PILOT tax freezes will only be awarded to development projects within the existing boundaries of the defined target area of Nashville's urban core that have a minimum twenty percent (20%) set-aside for affordable housing.
- Any development project that is under construction, excluding stabilization, site preparation or utility work, will not be eligible to apply for or to receive a PILOT tax freeze.
- To be eligible for a PILOT, the value of the proposed building renovations, site improvements or new construction must be equal to or greater than at least sixty percent (60%) of the total project cost (property & building acquisitions costs, financing expenses).
- An applicant must own the property or have an option or other right to purchase the property in order to be eligible to apply for a PILOT tax freeze.
- Applications for a PILOT tax freeze must include a five (5) year project pro forma/financial analysis of the project's income and expenses.
- Multi-family residential or housing facility is defined as two or more residential units located in a single building, on one parcel of land or on contiguous parcels of land.
- An applicant will have up to one (1) year from the time of approval by the Industrial Development Board to close a PILOT lease. If the lease has not been closed within that time, the project will be required to be resubmitted, reviewed and approved by the IDB at the next regular scheduled meeting.
- If property subject to PILOT lease is vacant and unoccupied for a period of two (2) years, the lease will be terminated and the property may return to the tax rolls at the current tax assessment.
- All PILOT leases will be closed in the name of the applicant or party designated in the application as the owner of the project. Prior approval of the Industrial Development Board will be required for substitution of another party as lessee under any PILOT.

- No PILOT lease may be assigned prior to the completion of the project.
- The approval of a PILOT tax freeze is subject to the veto, in writing, by the Mayor of the Metropolitan Government of Nashville and Davidson County within fourteen (14) days of the Industrial Development Board meeting where such PILOT is approved.
- **Fee Schedule:**
 - The closing fee for a PILOT shall be one-half percent (1/2%) of the total project cost .
 - PILOT leases require approval by the Corporation of any sale, transfer or assignment, (as defined therein) of the lessee's interest in such PILOT lease, a fee equal to one percent (1%) of the project value shall be due in connection with such approval.
 - For the purpose of determining the closing fee in connection with a project, project costs shall be determined on the basis of the total budgeted cost for a project including, without limitation, all soft and hard costs.
 - The proposed budget set forth in any application to the Board shall be deemed to be a certification by the applicant that the budget set forth therein is a reasonable estimate of all project costs. An updated budget may be requested on behalf of the IDB at the time of closing of such PILOT.
 - Project value shall be determined on the basis of the total value given (including, without limitation, cash and assumption of debt) in the event of sale, transfer or assumption of all of the lessee's interest in a PILOT.
 - If the sale, transfer or assumption is for less than all of the lessee's or borrower's interest, project value shall be determined on the basis of an appraisal of the project.