

PILOT AGREEMENT

THIS PILOT AGREEMENT (the "**PILOT Agreement**") is made and entered into as of the _____ day of April, 2017, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY ("**MDHA**") and LSA GRIER HAYNES GARDEN, 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 contracted to purchase an existing 208 unit garden-style apartment development located at 2715 Whites Creek Pike, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Project Site**");

WHEREAS, Owner has proposed that the Project Site be renovated by Owner and operated 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) renovate 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 twenty (20) 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 renovation 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 renovate 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 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 1st of the calendar year following the year in which the construction of the Project is completed ("**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:

Tax Year	In-Lieu of Tax Payment
1	\$80,000
2	\$82,400
3	\$84,872
4	\$87,418
5	\$90,041
6	\$92,742
7	\$95,524
8	\$98,390
9	\$101,342
10	\$104,382

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 \$385 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, 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 (authorized April __, 2017 by MDHA) 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: James E. Haul
Title: Executive Director

LSA GRIER HAYNES GARDEN, LLC

By: LSA Capital, Inc.
Mr. Manager
[Signature]
Title: President

FILED WITH THE METROPOLITAN CLERK

Shannon B. Hall

Date

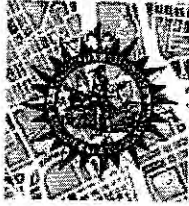
EXHIBIT A

The land is situated in the County of Davidson, State of Tennessee, and described as follows:

Land in the 12th Civil District of Davidson County, Tennessee, the beginning point being described as follows:

BEGINNING at the intersection of the centerline of Moormans Arm Road and centerline of Whites Creek Pike as presently located; thence in a northwesterly direction with a curve central angle $11^{\circ} 16' 11''$, radius 2,667.94 feet, tangent 263.24', length 524.77 feet, to the right and along the centerline of Whites Creek Pike 519 feet to a point in the centerline of Whites Creek Pike; thence North $72^{\circ} 32' 20''$ East 30 feet to a concrete monument in the easterly margin of Whites Creek Pike as presently located, and said monument being South $52^{\circ} 47' 04''$ East 116.71 feet from an existing U.S. Coast and Geodetic monument #25102 located in the westerly margin of Whites Creek Pike, this being the point of BEGINNING. THENCE along Joseph A. Thomas' southerly line North $72^{\circ} 32' 20''$ East 1208.48 feet to an iron pin located on J. B. Downey and Sons, Inc., westerly property line; thence, along J. B. Downey and Sons, Inc. westerly line South $4^{\circ} 29' 31''$ East 890.58 feet to an iron pin, said pin being the southeasterly corner of described tract; thence, South $58^{\circ} 45' 11''$ West 397.84 feet to an iron pin located on E. L. Ford's southeast corner; thence, along E. L. Ford's easterly line North $30^{\circ} 33' 38''$ West, 164.09 feet to an iron pin, said pin located on Charles W. Bender's southerly line; thence along said line, North $59^{\circ} 21' 48''$ East, 55.59 feet to a concrete monument located on Charles W. Bender's southeast corner; thence, North $34^{\circ} 36' 00''$ West 300.21 feet to a concrete monument; thence, South $58^{\circ} 35' 38''$ West 434.80 feet to a concrete monument, said monument located on the east margin of Whites Creek Pike; thence, along said margin North $34^{\circ} 09' 17''$ West 98.00 feet to a concrete monument; thence, continuing along said margin with a curve to the right (central angle $11^{\circ} 16' 11''$, radius 2,667.94', tangent 263.24', length 524.77') to the point of beginning and containing 767,962.80 square feet or 17.63 acres.

Being the same property as conveyed to LSA Haynes Garden, LLC, a Tennessee limited liability company by Deed from Haynes Garden Apartments, Inc., a Tennessee corporation, executed on December 29, 2016 of record as Instrument No. 20161230-0137204 in the 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

Memo

To: MDHA
From: Metropolitan Nashville Planning Department
Date: March 17, 2017
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.

PART I: RECOMMENDATION ON GENERAL PLAN CONSISTENCY

Project: **Haynes Garden Apartments (2715 Whites Creek Pike)**
208 existing multi-family units
All units proposed to be Section 8

Zoning: R8 (One and Two-Family Residential) requires a minimum 8,000 square foot lot and is intended for single-family dwellings and duplexes at an overall density of 5.79 dwelling units per acre including 25 percent duplex lots.

Land Use Policy: 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.

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 needs to take into account considerations such as timing and some elements of the existing developed character, such as 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.

Major and Collector Street Plan: T3-M-AB3 (Suburban-Mixed Use-Arterial Boulevard 3 Lane) The Major and Collector Street Plan (MCSP) calls for a 6 foot bike lane, 6 foot planting strip and 8 foot sidewalk along Whites Creek Pike adjacent to the existing development.

Project Details: The project is an existing 208 unit multi-family development. The project is composed of 17 multi-unit buildings along with 1 office/clubhouse building. The developer is proposing to utilize the PILOT funds for interior rehabilitation of existing units. No changes are proposed to the site layout. There is currently an outbound transit stop at the entrance to the complex and an inbound stop on the western side of Whites Creek Pike, across from the project. The inbound stop can be accessed by way of an existing signalized cross walk from the project entrance to the western side of Whites Creek Pike.

Moormans Arm Road/Whites Creek Pike Intersection Improvement Project

There is currently a project under design through Metro Public Works for the intersection of Moormans Arm Road and Whites Creek Pike. The project includes realignment of Moormans Arm Road with the existing entrance drive of the apartment complex. The project also includes various improvements to better the pedestrian environment including new crosswalks, raised islands, and sidewalk extensions. The sidewalk extensions will include an extension to tie in to an existing sidewalk on the western side of Whites Creek Pike. The project is not within the current year's construction budget and the design stage is continuing.

Planning Department Analysis: Although the use is not allowed under the R8 zoning district, the existing complex is a legally non-conforming use. The T3 Neighborhood Evolving policy can support a variety of residential uses including single-family, two-family, and multi-family with varying levels of intensity depending on site location. There is an existing MTA route along Whites Creek Pike and existing stops in close proximity to the complex, providing residents with transportation choice. The planned intersection improvement project will connect to an existing sidewalk and allow residents to walk to nearby commercial.

Planning Determination: The intersection improvement project will provide much needed pedestrian connections to this area. Given that this is a rehabilitation of an existing affordable housing project, staff finds that the project is consistent with the NashvilleNext general plan.

**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: Joe Cain on behalf of LSA Grier Haynes Garden, LLCProject Name: Haynes Garden ApartmentsLocation of the Project: 2715 Whites Creek Pike

Name of the Federal
Program to which the
applicant is applying: LIHTCName of
Certifying Jurisdiction: Metropolitan Nashville-Davidson County, TNCertifying Official
of the Jurisdiction
Name: Angela HubbardTitle: Community Development DirectorSignature: Angela C. HubbardDate: 4/4/2017

Federally Subsidized Multi-Family Projects within Census Tract 047037012701



Low Income Tax Credit Project	# of Units
Parkwood Villa Apts	160
Trinity Hills Apts	100

- Parcel 05900013000
- Low Income Tax Credit Project
- Census Tract



0.35 0.175 0 0.35 Miles