

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the _____ day of February, 2016, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and OLD HICKORY TOWERS TN, 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 (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 is under contract to acquire an existing 217 unit high-rise apartment building known as Old Hickory Towers, located at 930 Industrial Drive, 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, at a meeting held on February 2nd, 2016, 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 for a period not to extend beyond the tenth 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 thirty (30) years after the Project is complete (the "**Project Lease**");
- (C) enter into the PILOT Agreement;
- (D) submit this PILOT Agreement to the Metropolitan Council of the Metropolitan Government (the "**Metropolitan Council**") for approval as required by the PILOT Ordinance; and
- (E) 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 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 Project Lease is executed.

(b) Commencing on January 1st of the calendar year following the year in which the Project Lease is executed (“**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	\$140,367
2	\$144,578
3	\$159,036
4	\$163,807
5	\$168,721
6	\$173,782
7	\$178,996
8	\$184,366
9	\$189,897
10	\$195,594

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 the 2015 taxes payable with respect to the Project Site plus a nineteen percent (19%) increase in the first Tax Year, and a three percent (3%) annual increase commencing with the second Tax Year, with the exception of a ten percent (10%) increase in the third Tax Year whereupon stabilization of the Project is expected. 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 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, and (iii) MDHA taking title to the Property and entering into a mutually acceptable Project Lease.

8. MDHA shall remit all In Lieu of Tax Payments received in connection with the Project and/or the Project Lease (authorized February 2nd, 2016 by MDHA) to the Metropolitan Government within fifteen (15) days of receipt.

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

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY

By: _____

Title: _____

OLD HICKORY TOWERS TN, LP

By: _____

Title: _____

FILED WITH THE METROPOLITAN CLERK

Shannon B. Hall

Date

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT SITE

LAND IN THE 4TH CIVIL DISTRICT OF DAVIDSON COUNTY, TENNESSEE, AS DESCRIBED ACCORDING TO AN UNRECORDED SURVEY OF HOWARD W. ANDERSON, TENNESSEE CERTIFICATE NO. 5249, DATED SEPTEMBER 12, 1977, AS FOLLOWS:

BEGINNING AT AN IRON PIN LOCATED IN THE EASTERN MARGIN OF THE RIGHT-OF-WAY OF INDUSTRIAL ROAD, SAID PIN ALSO BEING 640 FEET MORE OR LESS NORTHEAST OF THE INTERSECTION OF INDUSTRIAL ROAD WITH ROBINSON ROAD; THENCE ALONG THE EASTERN RIGHT-OF-WAY MARGIN OF INDUSTRIAL ROAD ALONG THE CHORD OF A CURVE HAVING A RADIUS OF 5,804.69 FEET NORTH 50 DEG. 41 MIN. 20 SEC. EAST, 190.45 FEET TO AN IRON PIN; THENCE NORTH 49 DEG. 45 MIN. EAST, 961.45 FEET TO AN IRON PIN IN THE SOUTHERLY RIGHT-OF-WAY MARGIN OF THE L&N RAILROAD RIGHT-OF-WAY; THENCE ALONG THE RIGHT-OF-WAY OF SAID RAILROAD ALONG THE CHORD OF A CURVE HAVING A RADIUS OF 1,369.98 FEET SOUTH 32 DEG. 42 MIN. 26 SEC. EAST, 309.93 FEET TO AN IRON PIN; THENCE SOUTH 38 DEG. 12 MIN. 14 SEC. WEST, 443.91 FEET TO AN IRON PIN; THENCE NORTH 79 DEG. 04 MIN. 24 SEC. WEST, 254.91 FEET TO AN IRON PIN; THENCE ALONG THE CHORD OF A CURVE HAVING A RADIUS OF 276.25 FEET SOUTH 52 DEG. 38 MIN. 55 SEC. EAST, 245.88 FEET TO AN IRON PIN; THENCE SOUTH 26 DEG. 13 MIN. 24 SEC. EAST, 158.98 FEET TO AN IRON PIN; THENCE SOUTH 63 DEG. 25 MIN. 24 SEC. WEST, 153.69 FEET TO AN IRON PIN; THENCE SOUTH 17 DEG. 14 MIN. 29 SEC. WEST, 340.00 FEET TO AN IRON PIN; THENCE NORTH 47 DEG. 18 MIN. 01 SEC. WEST 747.65 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINING 12 ACRES, MORE OR LESS.

BEING THE SAME PROPERTY CONVEYED TO OLD HICKORY-TN/AHPC, A TENNESSEE LIMITED PARTNERSHIP, BY QUITCLAIM DEED OF RECORD IN BOOK 9954, PAGE 178, REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE.