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APPLICATION PROCESS

General Policies And Procedures – EXHIBIT A

Payment In Lieu Of Taxes (PILOT Criteria) – EXHIBIT B

**PILOT Program
for
Affordable Multi-Family Housing**

Application Process

Administered By

**THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD
OF THE CITY OF MEMPHIS, TENNESSEE**

In Cooperation With

**THE CITY OF MEMPHIS, TENNESSEE
Division of Finance
and
Division of Housing and Community Development**



**Adopted: April 3, 2002
Revised: September 2, 2015; June 8, 2016;
February 6, 2019**

APPLICATION PROCESS

PILOT PROGRAM

(Payment In Lieu Of Taxes)

Administered By:

**THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF
THE CITY OF MEMPHIS, TENNESSEE**
(hereinafter HEHFB or Board)

INTRODUCTION

The PILOT (Payment In Lieu Of Taxes) Program is a financial incentive designed to encourage new construction and substantial rehabilitation of affordable multi-family housing through significant property tax relief for qualifying properties located within the limits of the City of Memphis, Tennessee (the “City”).

Types of PILOT Categories/Initial and Maximum Terms

1. New Construction: 15yr/20yr maximum
2. Acquisition Rehab: 15yr/20yr maximum
3. Tax Credit: 15yr/20yr maximum
4. High Impact: 25yr maximum
5. Expired/Re-established: Up to 10yr/Aggregate 20yr maximum

Program Boundaries

The PILOT Program is offered for new construction and substantial rehabilitation projects (as defined herein) throughout the City.

Basic Eligibility Requirements

Investment: To be eligible for an original PILOT, substantial rehabilitation shall mean financial investment in construction costs equal to or greater than fifty (50%) percent of the value of the land, property acquisition costs, building improvements, site improvements or new construction, excluding all soft costs. To be eligible for an extended PILOT, please see PILOT Term Extension Qualifications on Page 9 herein.

Site Control: The applicant (“Applicant”) must have site control which shall be the equivalent of a fee simple title, 99-year lease, or an option to purchase with no contingencies except financing.

Financial Commitment: Applicant must provide evidence of financing commitment for the total project costs.

Target Market: 20% of the Applicant’s units must be occupied by individuals whose income is 50% or less of the area median income **or** 40% or more of the units must be occupied by individuals whose income is 60% or less of the area median income.

Tenant Benefits: Tenant Benefits are a central component of the PILOT Program and full compliance shall be maintained at all times throughout the duration of the PILOT in order for the PILOT to be considered in

good standing. At the outset, the Applicant must provide a written narrative and projection of how the PILOT savings will directly benefit tenants through one or more of the following amenities, including, but not limited to, (i) additional property improvements, (ii) rental payment reduction or stabilization, and (iii) additional tenant amenities and/or services, to include any specific social services delivered directly or in conjunction with established nonprofit/community agencies.

“High Impact” Projects: As defined by the Memphis City Council Resolution, adopted August 28, 2018 (the “Resolution”) are projects which, among other things, shall (i) represent a total investment of \$15,000,000.00 (\$15 million), and must provide 40% or more of their units to families at or below 60% of the area median income, (ii) have an active Crime Prevention program incorporating the principals of “Crime Prevention through Environmental Design” (C.P.T.E.D.) provided by a local vendor that holds a current certification in C.P.T.E.D. provided by the National Institute of Crime Prevention, (iii) provide 24 hour security personnel on site, (iv) offering a substantial number of 2 and 3 bedroom units, (v) accept section 8 vouchers and veteran’s vouchers, (vi) provide common space for tenant activities, (vii) provide after school activities and playground equipment, (viii) provide computer learning center and public designated WI-FI hotspot area(s) accessible to residents and (ix) have handicapped adaptable units in compliance with guidelines of the Americans with Disabilities Act of 1990 (“ADA”).

APPLICATION PROCESS

1. Pre-Submittal Conference - A mandatory meeting with the HEHFB Executive Director, or designated representative, shall be held prior to submission of a PILOT application. This meeting is to acquaint all parties with the scope of the Project application process, tenant benefit compliance requirements and any related issues. This meeting also serves to familiarize the Applicant with the overall submittal and review process as well as overall PILOT policies and basic eligibility requirements. **The Board reserves the right to reject applications when this requirement has not been met.**
2. Submittal of Application - An outline of the PILOT application follows in this package. The application must be submitted in conformity with the Board’s guidelines. There will be one (i) original hard copy in a 3-ring tabbed binder and an electronic copy. Neither application draft nor final applications will be accepted after 3:00 PM Central Time. If the format of the submitted application does not comply with the format or policies of the Board, the application will not be reviewed.

All applications should be delivered to:

The Health, Educational and Housing Facility Board of the City of Memphis, Tennessee
65 Union Avenue, Suite 1120
Memphis, Tennessee 38103

3. Board Review and Approval - The Health, Educational and Housing Facility Board of Directors (“the Board”) generally meets on the first Wednesday of each month at 12 Noon. Meetings are held at the Office of the Board located at 65 Union Avenue, Suite 1120, Memphis, Tennessee 38103. Per resolution of the Board, a Board PILOT Review Committee (the “PILOT Committee”) has been established to review, with the staff, and make recommendation to the Board for PILOT application approvals and ongoing monitoring and compliance. Applicants may be permitted to present to the Board after staff evaluation and review and based on recommendation by the PILOT Committee. The Board will deliberate on all applications and render its decision(s) on all applications at a later time.
4. Board Review of PILOT Term Extension Requests - PILOT Term Extension Requests will be reviewed by the Board PILOT Review Committee (the “PILOT Committee”) with staff, and make

recommendation to the Board for PILOT Term Extension approval and ongoing monitoring and compliance. The Board will consider the request when proper materials have been submitted in a timely fashion and all applicable fees have been paid. Applicants may be permitted to present to the Board after staff evaluation and review and based on recommendation by the PILOT Committee. The Board will deliberate on all applications and render its decision(s) on all applications at a later time.

5. Closing - If the Project is approved by the Board, the Board's General Counsel will prepare and distribute required PILOT documentation and upon receipt of all required documents will arrange a PILOT closing at which time regulatory and compliance agreements will be executed, all required legal documents will be duly recorded with the Shelby County Register's Office, and all required recorded documents will be filed with the Shelby County Assessor and the City and Shelby County taxing authorities and removed from the tax rolls for the complete term of the PILOT.

PILOT APPLICATION FEE(S) AND CLOSING FEE(S)

I. PILOT Application Fee

The PILOT Application Fee is defined as a non-refundable minimum fee (subject to change as determined by the Board), due and payable upon submission of the application, per project and currently calculated on the following basis:

- \$3,000 for all Projects with total project costs of less than \$5,000,000;
- \$4,000 for all Projects with total project costs of \$5,000,000-\$10,000,000;
- \$5,000 for all Projects with total project costs of \$10,000,000-\$15,000,000; and
- \$6,000 for all Projects with total project costs greater than \$15,000,000.

The Application Fee is a separate fee and shall not be credited against the Closing Fee (as defined herein).

II. Term Extension Application Fee

PILOT Term Extension Application Fee is defined as a non-refundable fee, due and payable upon submission of the application, per project, equal to the original PILOT Application Fee for the Project. **The PILOT Term Extension Application Fee is a separate fee and shall not be credited against the PILOT Term Extension Closing Fee** (as defined herein).

III. Board PILOT Closing Fee (Original PILOT)

The PILOT Closing Fee charged by the Board for a ten (10) year PILOT is assessed at one percent (1%) of the Total Project Cost (defined herein and subject to change as determined by the Board), plus applicable attorney fees and filing fees. In addition, the PILOT Closing Fee shall be increased by a minimum ten (10) basis points for each additional year of the PILOT term beyond the initial ten (10) year term (subject to change as determined by the Board). For purposes of assessing the amount of the PILOT Closing fee, Total Project Costs shall mean all costs except property appraisals, market studies, environmental studies, monitoring fees and rent-up costs. In addition, Total Project Costs shall not include project reserves and capitalized interest. The Board PILOT Closing Fees are assessed and due and payable at Closing.

IV. **Board PILOT Closing Fee (Term Extended PILOT)**

The PILOT Term Extension Closing Fee charged by the Board shall apply to all PILOTs that exceed a term of ten (10) years and is assessed at a minimum of ten (10) basis points, which shall be increased by a minimum of ten (10) basis points for each year that the PILOT is outstanding beyond the initial (10) year term. The Board PILOT Term Extension Closing Fees are assessed and due and payable at Closing.

V. **PILOT Closing Extension Fee**

The Applicant will have up to six (6) months from the date of approval by the Board to close the PILOT or PILOT term extension transaction. If the transaction has not closed within that timeframe, the Project may be considered by the Board for an additional six (6) month period, upon payment of a closing extension fee. The Closing Extension Fee is defined as a payment equal to the original application fee. Said Closing Extension Fee will be due and payable before any closing extension is considered. **The Closing Extension Fee shall not be credited against the Closing Fee.**

VI. **PILOT Transfer Fee**

An existing PILOT, in good standing, may be transferred to another entity in compliance with Board policy. Each PILOT transfer must be approved by the Board after consideration of a PILOT Transfer Application submitted by the potential transferee. The required Transfer Fee will be charged at 50% of the original application fee (subject to change as determined by the Board), plus applicable Board expenses including reasonable attorney fees and filing fees. The Transfer Fee shall be submitted with the PILOT Transfer Application.

VII. **PILOT Project Refinancing Fee**

At any time an existing PILOT lessee seeks to refinance indebtedness on the PILOT property, each project refinancing must be approved by the Board, in addition to, submission of all required documentation and payment of a fee, by the potential transferee. The required project refinancing fee will be \$500 (subject to change as determined by the Board), plus applicable Board expenses including reasonable attorney fees. The Project Refinancing Fee shall be submitted before such proposal is considered by the Board.

ADDITIONAL PILOT ANNUAL PAYMENTS AND FEES

VIII. **Annual PILOT Payments**

Annual PILOT payments are defined as annual payment in lieu of tax payments ("PILOT Payments") payable to the City and County taxing authorities.

IX. **The PILOT Term Extension Payments**

Annual PILOT Extension payments are charged by the City and County taxing authorities, for each year beyond the initial ten (10) year period, whereby the PILOT payments are increased annually, based on: (i) no less than ten (10%) percent of the current PILOT payment after the first ten (10) year term of the PILOT, or (ii) the percentage of the fair market value of the Project that will allow the annual payment to equal the unabated tax payment at the termination of the PILOT, at a rate to be determined by the Board, in order to assist properties in transitioning back on to the tax rolls at full market value. PILOT Term Extension payments are billed annually by the City and County taxing authorities.

X. **PILOT Monitoring and Compliance Fees**

PILOT Monitoring and Compliance fees are assessed annually on each PILOT property to assist in defraying the costs of ongoing monitoring and compliance with the Board's PILOT program guidelines. **Each PILOT property is currently charged at the rate of \$12 per unit per year. This fee is subject to change from time to time by action of the Board, and upon no less than thirty (30) days prior written notice to affected PILOT lessees.**

OTHER CLOSING REQUIREMENTS

The following must be provided at every Closing:

- Fire and extended coverage and general liability insurance on the property with coverage amount equal to the full value of the property. The Board should be named as an additional insured with certificate provided prior to closing. The policy of insurance must be provided with highly rated companies qualified to do business in the state of Tennessee;
- Notice to insurer advising that the Board will be given no less than thirty (30) days prior notice, if any insurance on the property is being reduced, terminated, or going to lapse;
- Approved Phase I Environmental Assessment;
- Copy of Management Contract or in the case of self-management – governing documents;
- Commitment from title insurance company showing the Board as insured party with only exceptions specifically approved by the Board's general counsel.

HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD CONTACTS

Executive Director:

Martin Edwards, Jr.
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Office Telephone: (901) 527-6400
Office Fax: (901) 527-6405
Email Address: martin.edwards@memphishehf.com
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Memphis, Tennessee 38103
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Carpenter Law, PLLC
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Memphis, Tennessee 38103
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Email Address: charlesc@386beale.com
Web Site: www.CarpenterLaw1978.com

AMENDMENTS

These policies and procedures, and all application forms and other documents adopted or established by the Board, are subject to being updated and amended from time to time, as determined by the Board.

ATTACHMENTS

- ❖ **GENERAL POLICIES AND PROCEDURES – EXHIBIT A**
- ❖ **PAYMENT IN LIEU OF TAX CRITERIA – EXHIBIT B**

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EXHIBIT A

GENERAL POLICIES AND PROCEDURES

As set forth in the Tennessee Code Annotated (TCA), Section 48-101-312, et. seq. (the “Act”), and as delegated by the Council of the City of Memphis (the “City Council”) The Health, Educational and Housing Facility Board of the City of Memphis, Tennessee (the “Board”) is authorized to negotiate and enter into with the Board’s lessees, payments in lieu of ad valorem taxes; provided, that such authorization shall be granted only upon a finding that such payments are deemed to be in furtherance of the Board’s public purposes. For the purposes of assessing the amount of the Closing Fee, Project Costs is defined to include all costs except property appraisals, market studies, environmental studies, monitoring fees, rent-up costs, reserves, and capitalized interest.

PILOT Minimum Qualifications

The following criterion sets forth the requirements for a property to qualify under the Board’s PILOT program:

1. The project must meet the following affordability requirement: 20% or more of the Applicant’s units must be occupied by households whose income is 50% or less of the area median income or 40% or more of the units must be occupied by individuals whose income is 60% or less of the area median income. For “High Impact” developments, the project must meet 40% or more of the units must be occupied by individuals whose income is 60% or less of the area median income.
2. The value of the building renovations, site improvements or new construction must be equal to or greater than fifty percent (50%) of the property acquisition costs.
3. Tenant benefits must be clearly defined and will be monitored throughout the term of the PILOT.
4. “High Impact” projects should provide minimum requirements imposed in the Resolution of the City Council adopted on August 28, 2018 (the “Resolution”), as set forth under the section “Basic Eligibility Requirements” on Page 4 herein.

Mandatory Pre-Submittal Conference and Approval Process

All applicants are required to attend a mandatory pre-submittal conference with Board staff and/or a designated representative of the Board, where the application will be discussed in detail and the Applicant will be further apprised of the PILOT review process, PILOT policies, including tenant benefits and basic eligibility requirements. The Applicant must also set forth the expected benefits to the tenants of the Project as a result of PILOT benefits, including an analysis of the monetary amount anticipated to be utilized for the administration of tenant based programs, using the analysis of the tax amounts saved with the PILOT in place and without PILOT approval.

Initial review of the application will be done by the PILOT Committee and staff. Upon review and recommendation by the PILOT Committee, final approval shall be determined by the Board.

Board approval will be based on the above minimum PILOT Qualifications, as well as any additional requirements that the Board may impose, including, but not limited to, the following, listed in order of priority:

1. Detailing and tracing of tenant benefits;
2. Financing, with preference given to projects with the highest likelihood of performing the proposed construction or rehabilitation;
3. Projects demonstrating the greatest leverage of project funds and tax benefit; and
4. Community impact.

PILOT Term Extension Qualifications

PILOT program participants may be eligible for an extension of the approved PILOT term as it is stated in Application Fee(s) and Closing Fee(s), Section IX on Page 6 of the PILOT application, as may be amended by the Board. PILOT Term extension applicant(s) may apply for a term extension prior to the original PILOT term expiration, as may be prescribed by the Board. Developments which qualify for, and receive an extended PILOT award, shall be charged PILOT Extension payments by the City and County taxing authorities, for each year beyond the initial ten (10) year period; whereby the PILOT payments are increased, based on: (i) no less than ten (10%) percent of the current PILOT payment after the first ten (10) year term of the PILOT, or (ii) the percentage of the fair market value of the Project that will allow the annual payment to equal the unabated tax payment at the termination of the PILOT, at a rate to be determined by the Board, in order to assist properties in transitioning back on to the tax rolls at full market value. PILOT Term Extension payments are billed annually by the City and County taxing authorities. PILOT Compliance must be maintained throughout the entire extension term in order to continue participation in the PILOT Program. **If at any time, the Project is deemed non-compliant pursuant to the PILOT Lease, after the cure period ends, the PILOT may be terminated by the Board, whether the PILOT is currently in an initial or extended PILOT term.**

In addition to the above stated qualifications, Board approval of all PILOT extensions will be weighted on the following required materials to be submitted, as well as, any additional requirements that may be imposed by the Board, including, but not limited to the following:

1. Trailing Rent Roll, with an approximate 75% average occupancy over the past six (6) months;
2. Five (5) year cash flow pro-forma, both with and without PILOT considered;
3. Sources and uses of funds;
4. Listing of proposed property renovations, if any;
5. Listing of the current and/or newly proposed Tenant Benefits;
6. Third party inspection and certification for general property conditions, compliance, and proof of life of major systems;
7. Updated financial statements for owner and/or property, if applicable;
8. Three years Property Profit and Loss Statement(s), if applicable;
9. Payment of PILOT Term Extension Application Fee; and
10. Payment of PILOT Term Extension Closing Fee.

Closing Fee Allocation

The Board shall establish the Closing Fee for issuing the PILOT according to its current policies, which closing fees shall be payable at Closing. For the purposes of determining the Closing Fee in connection

with a project, project costs shall be determined on the basis of the total certified cost for a project including, without limitation, all acquisition and hard costs. The budget set forth in any application to the Board shall be deemed to be an initial certification by the Applicant that the budget set forth therein is a reasonable estimate of all project costs. At completion of the project, a completion budget will be required, certified by the project architect or lender and any difference in final project costs shall be adjusted at that time, in order for the PILOT Agreement to remain in good standing.

The Closing Fee will be charged to all participating developments. This fee will be divided as follows: seventy percent (70%) to the Board and thirty percent (30%) to the City of Memphis Division of Housing and Community Development (“HCD”).

For Memphis Housing Authority (“MHA”) PILOT projects administered by the Board, the Closing Fee will be divided as follows: thirty percent (30%) to the Board and seventy percent (70%) to HCD.

Total Project Costs

For purposes of assessing the amount of the PILOT Closing fee, Total Project Costs shall mean all costs except property appraisals, market studies, environmental studies, monitoring fees and rent-up costs. In addition, Total Project Costs shall not include project reserves and capitalized interest.

Total Project Cost Valuation

There will be a preliminary and final valuation of Total Project Costs. The preliminary valuation will be set forth in the application and confirmed at the pre-submittal conference, with the final valuation determined at the completion of construction/renovation of the project. **For purposes of the final valuation, the lessee will be required to submit an Architect’s Inspection certificate or Lender’s certificate to evidence and certify the final Total Project Costs.**

PILOT Documentation

The required documentation for an approved Board PILOT transaction shall include, but not limited to, the following:

- PILOT Agreement;
- Lease Agreement; and
- Quit Claim Deed transferring title to the property to the Board.

The required documentation for an approved MHA PILOT transaction shall include, but not limited to, the following:

- Ground Lease
- Sublease
- Sub-Sublease

Compliance/Monitoring

It is the central purpose of this program to benefit low and moderate income tenants. As a result, properties included in this tax relief program are subject to quarterly reporting and monitoring requirements for compliance with both the terms of this program and with other fair housing practices. Each approved applicant will submit periodic reports to the Board to insure compliance with PILOT program requirements. Said compliance requirements will be provided in the pre-submittal conference. **The costs of the compliance and monitoring services shall be the responsibility of the Applicant. The compliance and monitoring by the Board may be provided by a third party vendor, and will include, but is not limited to, tracking on a quarterly basis of the following (as may be amended by the Board):**

1. Total amount of the tax benefit earned by PILOT;
2. Total value of tenant benefit generated by PILOT; (Evidence of benefit pass-through);
3. Evidence of percentage of tenants whose income falls within 50% or 60% of the area median income;
4. Evidence of general liability insurance renewals with the Board listed as an additional insured;
5. Receipt of a final title insurance policy;
6. Status of management contract, including current emergency contact information;
7. Receipt and Status of latest U.S. Department of Housing and Urban Development REAC inspection report and/or any other related third-party report, if applicable; and
8. Written disclosure to the Board within five (5) business days of any known violations of the Memphis and Shelby County Building Codes.

Additionally, the Board will conduct an annual onsite lease file review and property inspection. This will include any observable violations of the Memphis and Shelby County Building Codes. If after review, any Project is found to be deficient in complying with the Board's PILOT standards the following procedure will apply:

- A. The Applicant will receive a written Deficiency Notice from the Board staff, including a list of deficiencies.
- B. The Applicant will be allowed thirty (30) days from the date of the Deficiency Notice to cure the listed deficiencies; and if, for any reason, the deficiencies cannot be cured within the thirty (30) day period, an acceptable cure plan shall be submitted and must be accepted by the Board within the thirty (30) day period from the date of the Deficiency Notice.
- C. If the thirty (30) day period ends without cure or an acceptable cure plan being approved by the Board, the matter will be transferred to the Board's general counsel for legal proceedings pursuant to the PILOT Lease. The Board's general counsel will immediately send a written Notice of Default, pursuant to Section 5.1 (b) of the PILOT Lease, which will provide for a cure period as provided in the PILOT Lease within which to redress any and all deficiencies. If all deficiencies are not cured or an acceptable cure plan has not been accepted by the Board for good cause shown within the cure period as provided in the PILOT Lease, the PILOT will be considered in material default and upon recommendation of the PILOT Committee, the PILOT will be subject to immediate termination by the Board and the property will be immediately restored to the tax rolls at its full current assessed values.
- D. The Board's decision will be final and non-appealable.

State of Tennessee/Shelby County Assessor/Board- Annual Reporting Requirements

On or before October 1 each year, pursuant to Tennessee Code Annotated, Section 48-101-312 (d) each PILOT lessee shall file with the Tennessee Board of Equalization, the Shelby County Assessor and the Board, an annual report listing all leased properties and details of the lease and payment in lieu of tax (PILOT) agreements in the format provided in Tennessee Code Annotated, Section 7-53-305. A copy of the report shall be filed with the Shelby County Assessor of property on or before October 15. The Shelby County Assessor may audit or review the report and conduct a comparative analysis to ensure that all agreements and reports are filed. Failure to complete and file the report with the Tennessee Board of Equalization in a timely way shall subject lessee to a late filing fees, as provided by statute, payable to the State Board of Equalization. In addition, failure to file the report with the Tennessee Board of Equalization or Shelby County Assessor within thirty (30) days after written demand for the report shall subject the lessee to an additional payment in lieu of tax.

Additional Guidelines

1. The maximum allowable term for a Board PILOT lease, extended or otherwise, shall be up to 20 years, whether the PILOT is extended or not; provided that, a “High Impact” development PILOT lease shall be up to 25 years. An MHA PILOT lease shall be twenty (20) years;
2. Payments in lieu of taxes shall be based on the assessed value of the property as published by the Shelby County Assessor, at the time that the PILOT is applied;
3. 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. Said site control shall be the equivalent of fee simple title, 99 year lease or an option to purchase with no contingencies except financing;
4. Applications for PILOT approval must include a five (5) year project pro forma/financial analysis of the project’s income, expenses and tenant benefits;
5. Applications for PILOT properties that are participating in the U.S. Department of Housing and Urban Development (“HUD”) must include the (i) HUD application, (ii) HUD approval notifications and (iii) latest HUD REAC inspection report and/or other third party related report, as applicable, to be received by the Board within 30 days of report(s);
6. An Applicant will have up to six (6) months from the time of approval by the Board to close a PILOT transaction. If the transaction has not been closed within that time, the Project may apply to the Board for an additional six (6) month extension period. A closing extension fee equal to the original application fee will be due and payable before said extension shall be granted. The extension fee shall not be credited against the closing fee. After one (1) extension, any additional extensions will require a good cause showing before the Board for further approval, and shall be subject to additional extension fees;
7. All PILOTs not closed within one (1) year of approval are subject to withdrawal by the Board;
8. If property approved for a PILOT becomes vacant and unoccupied for a period of three (3) months, the PILOT agreement will be terminated, and the property may return to the tax rolls at the then current tax assessment;
9. All PILOT transactions will be closed in the name of the Applicant or party designated in the application as the owner of the project. Prior written approval of Board will be required for substitution of another party under any PILOT agreement prior to closing thereof;
10. No PILOT agreement may be transferred/assigned without the approval of the Board. The transferee/assignee must agree to comply with the terms of the PILOT documents, meet all

compliance requirements, execute all necessary transfer/assignment documents, and pay a required transfer fee equal to a minimum of 50% of the original application fee, plus applicable Board expenses and attorney fees. Transfer applicants shall be subject to background checks;

11. Upon completion of any Project subject to a PILOT agreement, the Project shall be reviewed to determine if the Project was completed as set forth in the application with respect to such project plans and specifications as approved by the Board;
12. All PILOT properties must maintain an occupancy of approximately seventy-five percent (75%) following the lease-up schedule provided in the application, or as modified and approved by the Board, and shall be in compliance with all other current requirements as imposed by the Board.
13. Construction and/or rehabilitation of a PILOT property should begin no later than six (6) months following the closing of the PILOT;
14. Project value shall be determined on the basis of the total appraised 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;
15. In the event the Project is sold or refinanced, it is possible to continue the PILOT, subject to certain conditions as approved by the Board, but any legal or other costs associated with the matter will be borne by the Applicant;
16. If minor errors exist in a submitted and eligible application, the Board may, in its discretion, allow the applicant up to 10 business days to make the needed corrections;
17. Any change in liability insurance is to be immediately reported to the Board, as the Board is to remain an additional insured party at all times during the term of the project's PILOT;
18. Changes made to the on-site management or the name of a property require Board approval and prior written notification must be provided to the Board immediately with new contact information, as applicable; and
19. In order to avoid the payment of Central Business Improvement District ("CBID") taxes, it shall be the sole responsibility of the Applicant to file a separate application with the Design Review Board ("DRB") of the Downtown Memphis Commission ("DMC"). The DRB will be solely responsible for the review and approval of the project and design separate and apart from the Board. If for any reason, the design of the Applicant is not approved by the DRB and the Applicant chooses to proceed with the PILOT, the Applicant will be subject to the annual payment of the CBID taxes.

Transfer of PILOT

Once applied, there shall be transfers of the PILOT by the Applicant which have not been formally approved by the Board, and any attempt to do so shall be void ab initio. Each PILOT transfer must be approved by the Board after consideration of a PILOT Transfer application submitted by the proposed transferee. As a condition of transfer, the transferee must agree to comply with the terms of the PILOT Agreement and other PILOT conditions, including, but not limited to, tenant benefits, compliance and monitoring, and fire and general liability insurance requirements. The transfer fee shall be a minimum of 50% of the initial PILOT application fee, plus applicable Board expenses, including reasonable attorney fees. The transfer fee shall be submitted with the PILOT Transfer Application. **All transfer applications must be submitted to the Board a minimum of four (4) weeks prior to the Board meeting at which the transfer application will be considered.**

Project Financing/Deeds of Trust

As titleholder, the Board may, under circumstances approved by the general counsel of the Board, agree to enter into a Deed of Trust, as requested, in order for the Applicant to obtain permanent financing after PILOT approval. The Board shall assume no liability whatsoever, financial or otherwise, for payment of the obligations of the Applicant as evidenced by any note secured thereby. Anything to the contrary in a Deed of Trust notwithstanding, in the event of default on the note by the Applicant, the sole remedy for a lender against the Board is the conveyance of the property to lender. A lender, by accepting the Deed of Trust, agrees that it shall not sue for, seek or demand any deficiency judgment or other money judgment or to impose any liability against Board or its successors and assigns (including any incorporator, member, director, employee or agent) for repayment of any debt and is fully exculpated therefrom by lender, trustee, and Applicant.

Project Refinancing

PILOT projects undergoing refinancing must be approved by the Board for continuation of the PILOT agreement. The Applicant must submit for the Board's review the following information: an updated sources and uses of funds table, an updated five (5) year cash flow pro-forma both with the PILOT and without the PILOT considered, listing of the project's current provided or proposed revised tenant benefits, as well as the loan commitment letter or letter(s), to support the proposed financing. The required project refinancing fee will be \$500 plus applicable Board expenses including reasonable attorney fees. The project refinancing fee shall be submitted before the proposal is considered by the Board. **These materials must be provided to the Board a minimum of four (4) weeks prior to the Board meeting at which time the continuation of the PILOT will be considered.**

Amendments

These policies and procedures, and all application forms and other documents adopted or established by the Board, are subject to being updated and amended from time to time, as determined by the Board.

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**GENERAL POLICIES AND PROCEDURES FOR THE
MEMPHIS HOUSING AUTHORITY LOW INCOME HOUSING TAX CREDIT PROPERTIES**

The Board is authorized by Resolution adopted on May 7, 2002 by the Council of the City of Memphis, Tennessee (the “Council”) to negotiate and enter into agreements with qualified lessees in connection with payments in lieu of ad valorem taxes, provided that such payments are deemed by the Board to be in furtherance of its public purpose (the “MHA Resolution”). The Memphis Housing Authority (“MHA”) is a public housing agency and is authorized by legislation codified as T.C.A. §13-20-104, et seq., as amended, among other things, to establish a payment in lieu of ad valorem taxes program (“MHA PILOT”), pursuant to T.C.A. §48-101-301 et seq. and T.C.A. §13-20-104, et seq. (collectively, the “MHA PILOT Act”); however, in lieu of seeking a direct delegation of authority, a variance of the Board’s delegation was applied for and granted.

Pursuant to the MHA PILOT Act, the MHA Resolution was amended by the Council on September 2, 2003, (the “Amended Resolution”) to provide a variance to the Board’s PILOT program for the benefit of MHA, so that it may continue its public benefit purposes of providing safe, sanitary, decent and affordable housing for low and moderate income families within the City of Memphis, and such purposes to be furthered by a variance restricted exclusively for projects developed through the assistance of low income housing tax credits (“LIHTC”), under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”).

Eligibility Criteria

- A. Approved projects must be affordable housing properties that are developed, acquired or subsidized by MHA to serve the general welfare of the citizens of the City of Memphis, Tennessee (the “City”) and the County of Shelby, Tennessee (the “County”).
- B. Approved projects must meet all criteria for the MHA PILOT as established by the Amended Resolution and the Board.
- C. Approved projects must develop LIHTC properties that are restricted under government regulations pursuant to the Code.
- D. Approved projects shall be endorsed, in writing, by MHA to be deemed to be in compliance with the Act, the Amended Resolution, the Code, and in furtherance of MHA’s mission in providing safe, sanitary, decent and affordable housing to the citizens of the City and County.
- E. The maximum allowable term for an approved MHA PILOT shall be twenty (20) years.
- F. To be eligible to apply for an MHA PILOT, at the time of the initial application, the Applicant must have site control, which shall be the equivalent of (i) fee simple title, (ii) a long term ground lease of not less than 50 years or (iii) an option to purchase with no contingencies except financing, and (iv) the Applicant must demonstrate evidence of financing commitment for the total project costs.

PILOT Structure

- A. For PILOTS issued hereunder, the Board will structure the PILOT and coordinate its implementation through the Shelby County Assessor's Office by finalizing (i) a PILOT Agreement, (ii) a Quit Claim Deed filed in the name of the Board and (iii) a PILOT Lease Agreement between the Board and the property owner.
- B. The Board will hold legal title to the real property, as a nominee only, solely for purpose of the PILOT program, and all other incidents of ownership of the real property for all purposes will flow to the lessee.
- C. At the end of the PILOT term, which shall not exceed a period of twenty (20) years, the Board shall by reconvey the real property to the owner.
- D. The Board shall prepare or assist in the preparation of, as applicable, a Sublease and Sub-sublease or a Quit Claim Deed, PILOT Agreement and PILOT Lease Agreement to effectuate the above structure.
- E. In the event that MHA holds legal title to the property, and intends to execute a long term ground lease of the property with a third party, the document structure will be for the third party to sub-lease the property to the Board and the Board will sub-sub lease the property to the third party which will finance, own and operate the improvements therein.

The maximum allowable term for an MHA PILOT on LIHTC properties is twenty (20) years.

In the event, LIHTC properties do not have a property assessment value to submit with the MHA PILOT application, as the property has been previously exempted under a prior governmental or exempt entity, upon PILOT approval said properties with no current assessment value must submit to the Board an independent appraisal of the property which sets forth a predevelopment market value assessment in order that the PILOT amount can be determined under the regular PILOT calculation.

As set forth in the MHA PILOT Act, before October 1 of each year, MHA shall submit to the State Board of Equalization an annual report containing a list of all the real and personal property owned by the housing authority and its associated entities and subsidiaries with respect to which payments in lieu of ad valorem taxes have been negotiated and accepted; the value of each listed property, as estimated by the lessee of the property; the date and term of the lease for each listed property; the amount of payments made in lieu of property taxes for each listed property; the date each listed property is scheduled to return to the regular tax rolls; and a calculation of the taxes which would have been due for each listed property if the properties were privately owned or otherwise subject to taxation. Each lessee of MHA shall be responsible for the timely completion and filing of the report, and failure to timely complete and file the report shall subject such lessees to a penalty equivalent to that applicable to similar lessees of industrial development corporations, provided, that no lessee shall be liable who has provided the State Board of Equalization information required by this section as may be pertinent to property leased by the lessee from MHA.

EXHIBIT B

PAYMENT IN LIEU OF TAXES (PILOT) CRITERIA

CRITERIA

HEHFB PILOT

Low to Moderate (LMB) Benefit

20% of the units shall be occupied by individuals or families with income not more than 50% of the area median; or

40% of the units shall be occupied by individuals or families with income not more than 60% or less of the area median

Minimum Rehab Investment

At least 50% of the property acquisition cost; provided however, in order to encourage smaller housing developments, the Board shall not establish criteria of a minimum number of units (development size) or a minimum amount of total development costs for new construction or the redevelopment of existing properties. Such smaller housing developments will be considered by the Board on a case by case basis.

Maximum Length of Freeze

Up to 20 years for regular PILOT; up to 25 years for qualifying "High Impact" projects; 20 years for MHA

Tenant Impact Analysis

Monitoring and Compliance required of tenant benefits

(Benefit Pass-Through)

OTHER NOTES

- All Closing Fees charged to all participating developments will be divided as follows: seventy percent (70%) to the HEHFB and thirty percent (30%) to the City of Memphis Division of Housing and Community Development ("HCD"). For Memphis Housing Authority ("MHA") assisted tax credit developments, the Closing Fee will be divided as follows: seventy percent (70%) to HCD and thirty percent (30%) to the HEHFB.
- Developments which qualify for and receive an extended PILOT pursuant to Section 2 (of the Council Resolution dated August 28, 2018) shall have their payments increased at the rate of no less than 10% after the initial term of the PILOT, as shall be determined by the Board, to help these properties transition back to the tax rolls after the termination of the PILOT. The Board has authority to set the rate and to work with developments to ensure that affordable units serving low to moderate income families are preserved.
- These policies and procedures, and all application forms and other documents adopted or established by the Board, are subject to being updated and amended from time to time, as determined by the Board.