



RESIDENTIAL PAYMENT · IN · LIEU · OF · TAX
PROGRAM

POLICIES AND PROCEDURES

TRIAL PROGRAM FOR 10 APPROVED PROJECTS

OF THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL
DEVELOPMENT BOARD OF THE CITY
OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE

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I. GENERAL PURPOSE AND PROVISIONS

The City of Memphis and County of Shelby, Tennessee, are committed to the promotion of high quality development in all parts of the City and County, as well as the surrounding region, and to ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City of Memphis and County of Shelby have established the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (“EDGE”) to lead Memphis and Shelby County economic development organizations, including the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee and Depot Redevelopment Corporation of Memphis and Shelby County, the Memphis and Shelby County Port Commission and Greater Memphis Alliance for Competitive Workforce. A primary tool of EDGE to effectuate its mission of economic development is the ability to grant a payment in lieu of (property) tax incentive.

It is the intention of EDGE to conduct its activities consistent with the provisions of Tennessee Code Annotated section 7-53-101, *et seq.*, and any and all other laws of the United States and the State of Tennessee applicable and available to EDGE for PILOTs, and with the enactments of the local legislative bodies, the Memphis City Council and the Shelby County Board of Commissioners, in establishing EDGE.

The intent of the Residential PILOT Program is to spur investment in market-rate multi-family residential rental projects in the City of Memphis and unincorporated Shelby County. The Residential PILOT Program shall be available for ten (10) approved projects as a trial program. If there is an active Community Development Corporation (“CDC”) servicing the area in which the proposed Project is located, EDGE will consider the CDC’s position on the proposed Project.

To this end, EDGE and its applicable affiliated entities will conduct their business within the guidelines set forth herein when considering applications for Residential PILOTs. Nothing within these policies and procedures shall imply or suggest that EDGE, the City of Memphis, and/or Shelby County are under any obligation to provide a PILOT in any amount or value to any Applicant. All Applicants shall be considered on a case-by-case basis, and the decision to approve or deny a PILOT shall be at the discretion of EDGE and, as specified, the discretion of the Mayors of the City of Memphis and/or County of Shelby. In certain cases the approval from the Memphis City Council and/or the Shelby County Board of Commissioners, and the Tennessee Commissioner of Economic and Community Development and of the Tennessee Comptroller of the Treasury, may also be required.

EDGE will encourage Applicants to include significant and verifiable mechanisms to reduce air and water pollution, solid waste, and energy consumption, and consider other investments that will improve the physical environment in Memphis and Shelby County.

EDGE has the right to amend or waive these Policies and Procedures, as needed, upon a majority vote of the EDGE Board of Directors, in order to effectuate its mission of economic development for Memphis and Shelby County, including the adoption, incorporation, and implementation of any and all available programs statutes, or other measures made available by the United States, the State of Tennessee, the County of Shelby, and/or the City of Memphis.

II. DEFINITIONS

“Applicant” means the person or entity which submits to EDGE an Application for a Residential PILOT.

“Application” means that document prepared, submitted, and, perhaps, amended by the Applicant, in accordance with the provisions of these Policies and Procedures, for the purpose of obtaining a Residential PILOT from EDGE.

“Charter” means the charter of EDGE, the State of Tennessee Amended and Restated Charter of Incorporation of EDGE, effective February 19, 2012, as amended from time to time.

“Community Reinvestment Credit” or “CRC” means real property located in Shelby County with existing improvements thereon and for which EDGE may award a PILOT, treating said existing improvements as if they are constructed new for the Project. By allowing a PILOT for CRC, EDGE’s intention is to allow the same PILOT benefits for a PILOT Recipient utilizing existing property as are allowed for new property and new construction.

“Eligible Census Tract” means a tract of real property that is eligible for the United States Treasury Department’s New Markets Tax Credit Program.

“Fiscal Impact Analysis” means an analysis periodically completed by EDGE’s Staff (the “Staff”) or consultants working on behalf of EDGE that is used by EDGE to compare the financial benefits of a Project applying for a PILOT with the costs over a time period. Such Fiscal Impact Analysis shall be used periodically to adjust the PILOT Evaluation Matrix and, in certain circumstances, to determine if a PILOT is offered to an Applicant and if so, the rate and term.

“Lease Agreement” means the formal contract pertaining to the lease of real and/or tangible personal property which is the subject of a Project, and contains all of the terms and conditions with which all parties of said Lease Agreement must be in compliance. The Lease Agreement is between EDGE, as lessor, and as lessees, the PILOT Recipient, a Related Party and/or an Unrelated Party as applicable.

“Local Business Participation Program” means the EDGE Local Business Participation Program as set forth in Section X.

“New Markets Tax Credit Program” means a federal program created under the Community Renewal Tax Act of 2000 to stimulate economic and community development in America’s low-income communities, as set forth in Section 45(d) of the Internal Revenue Code, as amended.

“PILOT Evaluation Matrix” is the methodology for identifying the number of years (i.e., term) which may be recommended for a Residential PILOT. The Residential PILOT Evaluation Matrix outlines the points that are awarded for the various criteria of a Project that together comprise the defined purpose of the Residential PILOT Program. The Residential PILOT Evaluation Matrix is included in Section V below.

“PILOT Lessee” means the individual or entity that owns the real property being contributed to

the PILOT Project, which is then leased back by the PILOT Lessee for the benefit of the PILOT Recipient and the Project. The PILOT Lessee may be the PILOT Recipient, but may also be a Related Party and/or an Unrelated Party as parties to the Lease Agreement. If the PILOT Lessee is not the PILOT Recipient, the term of the basic operating lease agreement between the PILOT Lessee (original fee owner) and the PILOT Recipient (the sub-lessee) for the property must be equal to (with options to renew and/or extensions for the sub-lease taken into account) or greater than the term of the Lease Agreement.

“PILOT Program” means the trial Residential PILOT program defined by these Policies and Procedures. This PILOT Program shall be limited to 10 approved residential market rate multi-family projects unless extended by the Board after review by the Mayors of Memphis and Shelby County.

“PILOT Recipient” means the person or entity directly receiving a PILOT from EDGE and/or the Sponsor.

“PILOT Term” means the number of years for which a PILOT is approved for a Project under the PILOT Program.

“Policies and Procedures” means these Residential PILOT Policies and Procedures, being the Residential Payment-In-Lieu-of-Tax Program Policies and Procedures of the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee.

“Project” means the project which brings together the real property (e.g., the land, buildings, structures, parking, and ground floor retail or other commercial uses) for multi-family residential rental and other rights and obligations of the PILOT Recipient and EDGE, as approved by the EDGE Board and memorialized in the Resolution and Lease Agreement.

“Ramp-Up Period” means the time period within which the PILOT Recipient must meet its Local Business Participation Program and any other benchmarks required in the Resolution. During the Ramp-Up Period, the PILOT Recipient receives its approved PILOT benefit and is subject to all reporting criteria, but is not subject to compliance requirements. The Ramp-Up Period shall be one (1) year, for PILOT Projects approved for a PILOT Term of four (4) years or less, and two (2) years for all Projects with longer PILOT Terms, unless a longer period of time is approved by EDGE. The Ramp-Up Period commences on the date of the first Lease Agreement executed between EDGE and the PILOT Recipient.

“Related Party” means the parent, owner or affiliate, including brother/sister entities, of the Applicant or PILOT Recipient.

“Residential PILOT” or “PILOT” means a Residential PILOT Project based on the market-rate multi-family residential rental properties rather than job creation, job retention or the attraction of a destruction retail establishment which are set forth in separate policies and procedures. A Residential PILOT shall be governed by the Policies and Procedures set forth herein.

“Resolution” means that resolution approved and executed by EDGE setting forth the PILOT

benefits to be provided directly or indirectly to the PILOT Recipient for the Project.

“Sponsor” means any person or entity with legal or economic responsibility for the Project. Typically, the Sponsor is the Related Party of the PILOT Recipient. If the Project includes a Sponsor, then both the Sponsor and the PILOT Recipient will be parties to the Lease Agreement.

“Unrelated Party” means any party that is not a Related Party.

III. GENERAL PILOT OBJECTIVES AND PROVISIONS

A. In accordance with the requirements of the laws of the State of Tennessee, EDGE must find each Project that is presented for approval to be in the public interest and one that will increase employment within the State of Tennessee. EDGE will evaluate Projects for PILOT eligibility based on the following minimum performance standards:

1. Minimum Requirements:
 - a. 25 residential units – New construction or substantial renovation.
 - b. Applicant must own or control the site.
 - c. Applicant must demonstrate proof of construction and post-construction financing to close the PILOT.
 - d. Sixty percent (60%) of the total Project costs must be spent on hard construction and/or building renovation and site work.
2. “But For” Test: Applicants must demonstrate the Project is not financially feasible without the PILOT benefit. EDGE will analyze the Project pro forma, third party market analysis of comparable projects, and other data to determine the need for the PILOT.
3. Financial Documentation: Applicant will supply a:
 - a. Project pro-forma on a monthly basis through stabilization and then annually through the term of the PILOT.
 - b. Project source and use of funds.
 - c. Third party market analysis of comparable projects showing anticipated rental and occupancy rates.
 - d. Sponsor Principals annual financial statements for the past three (3) years plus an interim financial statement no more than 90-days old at the time of PILOT approval, for staff review.
4. Units Reserved for Low and Moderate Income Individuals and Families:
 - a. For Projects with 25-50 units, 10% (rounded-up) must be set-aside for individuals or families that qualify as low/moderate income as defined by the U.S. Department of Housing & Urban Development for the Memphis area. For Projects with 51-75 units, 15% must be set aside; for Projects with 76 or more units, 20% must be set aside.

- b. Applicants that provide an extraordinary number of low/moderate income units will be awarded one (1) extra year on their PILOT.
 - i. For Projects with 25-50 units, 20% (rounded-up) must be set aside for individuals or families that qualify as low/moderate income as defined by the U.S. Department of Housing & Urban Development for the Memphis area.
 - ii. For projects with 51 or more units, 30% must be reserved for individuals or families that qualify as low/moderate income as defined by the U.S. Department of Housing & Urban Development for the Memphis area.
- 5. Community Support. Where an identifiable and credible community development corporation or similar neighborhood business or civic group exists, EDGE will consider the entity's position on the proposed Project.
- 6. Local Business Participation. To be considered for a Residential PILOT, the Applicant must comply with the Local Business Participation Program requirements set forth in Section X, below.

The PILOT Recipient must achieve its development commitments and the applicable Local Business Participation Program and other commitments made as part of the Application and approved in the Resolution by the end of the Ramp-Up Period.

B. To provide the intended benefit for approved PILOT Projects, EDGE shall take title to the real property associated with the Project and shall then, via the Lease Agreement, lease such property back to the PILOT Lessee for the duration of the PILOT Term, with the PILOT payments being established consistent with these Policies and Procedures and as set forth in the Lease Agreement. No benefit shall be provided under this Residential PILOT Program for personal property that is not a fixture to the real property in the program.

C. Under Lease Agreements, PILOT payments are to be made to the appropriate governmental entities in lieu of ad valorem taxes on the property involved in the Project, such properties no longer being subject to taxation by virtue of their ownership by EDGE.

Generally and subject to exceptions set forth herein, for real property, such PILOT payments are to be based on one-hundred percent (100%) of the property taxes which would otherwise be collected and attributable to the land and a fraction of the property taxes which would otherwise be collected and attributable to the real property improvements resulting from the Project at the time EDGE takes title to the property. In unique cases, the EDGE Board reserves the right to waive this provision and provide a Community Reinvestment Credit. At the present time, the minimum allowable fraction is subject to change from time to time by action of the Memphis City Council, Shelby County Commission, and/or EDGE Board, but no such change shall be applied retroactively to any previously approved PILOT. The minimum allowed PILOT payment for real property improvements is twenty-five (25%) for the City of Memphis, if located in whole or in part within the City of Memphis, and twenty-five (25%) for Shelby County.

D. Each PILOT Recipient, in its development, ownership, and/or operation of the Project, will be required to comply with all laws, ordinances, orders, rules, regulations, and requirements

of the duly constituted public authorities, which are or shall become applicable to the Project, including those applicable to the repair and/or alteration of the properties thereof, and the use or manner of use of said properties and the Project.

E. No Project shall receive a PILOT Term beyond a total of fifteen (15) years, absent special approval thereof by the Memphis City Council (if located in whole or in part within the city limits of Memphis) and the Shelby County Board of Commissioners. Any such terms in excess of twenty (20) years will also require the special approval of the Tennessee Commissioner of Economic and Community Development and of the Tennessee Comptroller of the Treasury. These term limits apply to all PILOTs granted by EDGE.

F. The term of the PILOT offered for a Project will be based upon an evaluation of the Project's merits, as determined by EDGE in its sole discretion. Subject to the exceptions set forth herein, each Project coming before EDGE will be scored based on the PILOT Evaluation Matrix.

G. New property may be added to the PILOT through new Lease Agreements every year during the Ramp-Up Period. After the expiration of the Ramp-Up Period, additional property may be added to the Project by amending the last Lease Agreement executed during the Ramp-Up Period.

H. No PILOT will be awarded unless said award is recommended in writing by the Mayor of the City of Memphis (if the Project is located in whole or in part in the City of Memphis) and the Mayor of Shelby County (acting alone, if the Project is located in the unincorporated area of Shelby County).

I. Applicant must demonstrate compliance with and payment of all municipal, county and state taxes due for all properties owned by it and located in Shelby County at the time of the filing of its PILOT Application and, if approved, during the entire PILOT Term. Payment of taxes which are under appeal shall not be required until the appeal is finally resolved, as provided under law.

J. EDGE shall complete a Fiscal Impact Analysis to give EDGE and the community a full view of the PILOT program.

K. PILOT benefits are freely assignable to a Related Party, provided the PILOT Recipient or Sponsor remains legally obligated to EDGE for the performance of all obligations set forth in the Resolution. The PILOT Recipient and intended assignee must provide written notice of such assignment to EDGE at or before the date of assignment. PILOT benefits are not assignable to an Unrelated Party without the prior written consent of EDGE.

L. A PILOT Recipient, in its sole discretion, may choose to terminate any Lease Agreement, at any time, and receive back ownership of the affected Project property from EDGE with any payments under the Lease Agreement remaining as a lien on the Project's property. Should a PILOT Recipient wish only to receive back a portion of the Project property, EDGE shall cooperate in the execution of all documents needed to give effect to this result.

IV. CONFLICTS OF INTEREST

Each EDGE Board member, each member of the Staff, and each third party entity retained by EDGE for assistance evaluating an Application shall be responsible for disclosing any material interest which he or she may have in or with an Applicant, Sponsor, Project, or Project financing source. Any EDGE Board member, Staff member or third party entity having any material interest in a Project or having a material interest in or family relationship with an Applicant, Sponsor or Project financing source shall submit to EDGE General Counsel a description of that interest or relationship, and EDGE General Counsel shall advise both EDGE and the affected member whether the member needs to recuse himself or herself from consideration of and/or work on the subject PILOT Application. Such recommendation of EDGE General Counsel shall be conclusive. If recusal is recommended, Staff shall work on the PILOT Application without participation from the EDGE Board member or Staff member who recused himself or herself, and EDGE will then consider the Application without participation from the recused EDGE Board member and/or Staff member.

EDGE Counsel shall not have a professional legal relationship with the Applicant, Sponsor, the Project, or the Project financing source as such a relationship would constitute a conflict of interest hereunder. In the event of a conflict of interest involving an EDGE Counsel on a Project or Application, special counsel, which may include other EDGE Counsel who has no such conflict, shall be retained by EDGE to represent it in connection with the particular Project being considered.

V. RESIDENTIAL PILOT SCORING CRITERIA

EDGE has established the criteria listed below for the evaluation of an Application seeking a Residential PILOT. These criteria are based upon the economic and physical development policies of the City of Memphis and Shelby County, Tennessee, and may be changed by EDGE on a prospective basis. These criteria will be considered in accordance with all applicable state laws and applied on a case-by-case basis in evaluating Projects seeking a Residential PILOT. Nothing contained herein, however, shall obligate EDGE, the City of Memphis, or Shelby County to approve an Application.

Scoring Criteria.

A. The following criteria address the responsibility of EDGE to demonstrate that the PILOT being awarded is in the public interest. If a Project meets these criteria to be considered for a PILOT incentive, the term of any PILOT that may be awarded will be determined by EDGE based upon the following PILOT Evaluation Matrix (the Applicant shall be awarded one (1) year of PILOT Term for every ten (10) points in the PILOT Evaluation Matrix when the category is scored in points):

1. Residential Units. Applicant will be awarded one (1) point for every ten (10) units created directly by the Project.
2. Location in City limits of Memphis, Tennessee. If the real property is located in the Memphis City limits, in whole or in part, the Project shall receive an additional one

(1) year in the PILOT Term.

3. Location in New Markets Tax Credit Program Eligible Census Tract. If the real property is located in an Eligible Census Tract at the time the PILOT Application is approved, the Project shall receive an additional two (2) years in PILOT Term.
4. Local Business Participation Program Incentive. Please see the Local Business Participation Program requirements and additional years opportunities as set forth in Section X, below.
5. Low and Moderate Income Units. If the Project has the minimum number of low and moderate income units no additional points or years shall be awarded. For an extraordinary number of units set aside for low and moderate income individuals as defined by the U.S. Department of Housing and Urban Development for the Memphis area. The Project shall receive one (1) additional year of benefits. For the purposes of these Policies, the extraordinary number of units shall be twenty percent (20%) for Projects with 25-50 units and thirty percent (30%) for Projects with 51 or more units.
6. Environmental Sustainability (Limit 1). If the Project achieves designation in Leadership in Energy and Environmental Design (LEED), Green Globes or Energy Star, it may receive the additional benefit stated below for the Project for which it receives the highest designation.

For items 1-6 above, if PILOT Recipient fails to maintain the established criteria, see Section IX herein for EDGE remedies upon default.

See Section III. I. regarding maximum limits on PILOT Terms.

PILOT Evaluation Matrix		
Scoring Criteria	Point	Years
Residential Units Constructed or Renovated	1 point for every ten (10) units	10 units = 1 year of PILOT benefits
Location in City of Memphis		1 year
New Markets Tax Credit Eligible Census Tract		2 years
LBP Exceptional Performance		1 year: If it spends an amount equal to between 35% and 44% of hard construction and site work plus an additional amount equal to or in excess of 30% of the third party contracts with LBPs over the PILOT Term; or 2 years: If it spends an amount greater than or equal to 45% of hard construction and site work participation plus an additional participation amount greater than or equal to 30% of the third party contracts with LBPs over the PILOT

		term.
Extraordinary Number of Low & Moderate Income Units		1 year
Environmental Sustainability (Limit 1 designation):		
Leadership in Energy & Environmental Design (LEED) Certified or Silver		1 year
LEED Gold or Platinum		2 year
Green Globes 1-2		1 year
Green Globes 3-4		2 year
Energy Start		1 year

VI. APPLICATION PROCESS

Any person or entity seeking a PILOT from EDGE shall be required to comply with the following application policies and procedures. Nothing within these policies and procedures shall imply or suggest that EDGE, the City of Memphis, and/or Shelby County are under any obligation to provide a PILOT in any amount or value to any Applicant.

EDGE regularly meets to consider Applications for PILOT's. EDGE considers Applications at duly called meetings conducted in compliance with the State of Tennessee's open meeting and open records laws. Monthly meetings may be waived or held at different locations and on dates selected at the discretion of EDGE.

A. Pre-Application. Potential Applicants and/or their representative(s) are encouraged to hold a pre-application meeting with the Staff to review the proposed Project and discuss the projected units and other PILOT criteria, as applicable. Please note that EDGE is subject to the public records laws of the State of Tennessee, and any information submitted to EDGE may be viewed or copied by any citizen of the State of Tennessee.

B. Explaining the Need for a Residential PILOT. Subject to exceptions specifically set forth herein, Residential PILOT Applicants shall submit a statement demonstrating that the PILOT sought is an important component of an overall plan to achieve the subject economic development/Project. The PILOT program is not an entitlement program and is granted only when the Applicant's need is demonstrated and the community's net benefit is identified.

C. Application. An Application for a Residential PILOT shall be made on EDGE's approved PILOT application form or in conformance with said form. An application fee in accordance with Section VII will be charged and payment of same must accompany any PILOT Application. The application fee is non-refundable, but will be credited toward the payment of the Closing Fee. PILOT Applications must be filed with Staff no later than the close of business ten (10) business days prior to the EDGE meeting at which the Application is to be considered, unless the Staff approves a shorter period of time between said filing and the hearing.

Applicant shall make available its audited financial statements for the last three (3) fiscal years for review by Staff (or EDGE's designated agent) to confirm the Applicant's financial ability to complete the Project as proposed, unless this condition is waived or modified by Staff and the

waiver is confirmed by a vote of the EDGE Board. Further, for a publically held corporation, the Applicant shall provide a copy of its latest annual report. If a privately held company, the Applicant shall provide (i) Project pro-forma on a monthly basis through stabilization and then annually through the term of the PILOT (ii) Project source and use of funds (iii) Third party market analysis of comparable projects showing anticipated rental and occupancy rates (iv) Sponsor Principals annual financial statements for the past three (3) years plus an interim financial statement no more than 90-days old at the time of PILOT approval, for staff review.

Each Application shall include statements that the Applicant shall not discriminate on the grounds of handicap or disability, age, race, color, religion, sex, natural origin, or any other classification protected under federal, Tennessee or local law. The Applicant will provide certification of ongoing compliance in this regard with its Annual Report to EDGE.

D. Application Amendment. The Applicant may amend its Application within one (1) year from EDGE Board approval of the PILOT Resolution for the Project. Amendments made after that time may be accepted only upon approval of EDGE. However, the closing fees shall be adjusted in either situation.

E. Initiation Period. PILOT Recipient must initiate its Project by closing on a real property Lease Agreement within two (2) years of the approval of the Resolution by the EDGE Board (the "Initiation Period"). During the Initiation Period, PILOT Recipient must provide status reports to the EDGE Board if the first Lease Agreement is not closed by the twelfth (12th) or eighteenth (18th) month of approval of the Resolution. If the first Lease Agreement is not closed during the Initiation Period, PILOT Recipient will have to apply to EDGE for an extension of time within which to close its first Lease Agreement; or, in the alternative, PILOT Recipient will have to submit a new Application for the Project at a later date.

VII. PAYMENTS

A. Application Fees. The Application must be completed and submitted to EDGE with an application fee, in the amount of \$3,000.00.

B. Fees Paid at Closing.

1. Closing Fee. A closing fee computed as follows will be paid to EDGE prior to or at the time of closing of the Lease Agreement. Closing fees are based on the benefits that a PILOT Recipient will receive (i.e., value of the tax savings over the anticipated term of the Lease Agreement). The closing fee will be calculated at seven percent (7%) of the estimated property tax savings, with a minimum of \$1,500 owed and a maximum of \$300,000 owed including both the City of Memphis and the Shelby County portions and taking into account all closing fees paid for the Project. The PILOT Recipient will also be responsible for paying any additional expenses (i.e., recording fees, transfer tax, courier, copies and postage). The PILOT Recipient shall not be required to pay for or to reimburse EDGE's attorney or consultant fees.
2. PILOT Payments and Rent. All PILOT Recipients shall make their PILOT payments as set forth in the Lease Agreement and shall pre-pay net basic rent for the entire PILOT Term at

the rate of \$100 per year at the time of closing any Lease Agreement.

3. Termination Fee. All PILOT Recipients must pre-pay a termination fee of \$1,000 at the time of closing any Lease Agreements.

These fees will be invoiced as part of the closing process.

C. Lease Amendments and Other Documentation. Amendments and other documentation, including, but not limited to joinder/estoppel fees, assignment/consents to or for existing PILOT Lease Agreements shall require a fee of \$1,000. For other documentation not involved with adding or removing property from the PILOT, the PILOT Recipient shall be responsible to reimburse EDGE's actual expenses, costs and reasonable attorney's fees incurred in reviewing closing documents or otherwise expended by EDGE as a result of PILOT Recipient's transactions.

D. Assignment of PILOT Benefits. In the event that the application for assignment of a PILOT, to an Unrelated Party is approved by EDGE, transfer fees shall be charged on the following basis and payable immediately upon such assignment.

1. One percent (1%) of the property tax savings up to \$1,000,000, with a minimum fee of \$4,000; plus
2. 0.5% of any property tax savings over \$1,000,000, provided that the maximum transfer fee payable for any assignment shall be \$25,000.

E. Penalties.

1. Termination. Upon the expiration of a Lease Agreement, EDGE shall provide written notification to the PILOT Recipient advising it of PILOT Recipient's duty, pursuant to the Lease Agreement, to submit to EDGE all required documentation and approvals needed to enable it to execute any deeds and bills of sale necessary to transfer ownership of Project property to the PILOT Lessee. PILOT Recipient's failure to submit the required documentation and approvals within ninety (90) days of said notification shall result in a penalty of \$2,000 per month, which shall accrue for each month or part of a month during which PILOT Recipient fails to submit these documents, beginning ninety (90) days after said notification has been submitted by EDGE.
2. Annual Report. If PILOT Recipient or Sponsor fails to file the Annual Report by January 31 of each year, PILOT Recipient shall pay a late fee of Fifty Dollars (\$50.00) for each day the Annual Report is late (February 1 or later) until the Annual Report is filed, subject to a maximum fee of Three Thousand Dollars (\$3,000) which will accrue interest at the rate of 1.5% per month or the maximum rate allowed by law. Late Annual Reports shall be accompanied by the payment of the late fee when filed. In addition, PILOT Recipient shall bear the costs of inspection pursuant to Section IX herein.
3. PILOT Payments. The PILOT payments shall be due and payable on the same dates as ad valorem tax payments are due to the City of Memphis or Shelby County or any other applicable municipality (as the case may be). If any such PILOT payments are not paid by

the applicable delinquency dates for payment of the corresponding county, city or other applicable municipality ad valorem taxes (as the case may be), then PILOT Recipient shall pay a penalty with respect to such delinquent PILOT payment from and after the delinquency date in the same amount as the penalty and all other charges which would be due on the corresponding county, city or other applicable municipality ad valorem taxes.

VIII. CLOSING REQUIREMENTS

A. Insurance. EDGE must be listed as an additional insured on all property insurance contracts, including, without limitation, casualty and liability insurance policies and property insurance policies which cover property utilized for the Project and whose title has been conveyed to EDGE. Insurance coverage limits shall be in an amount not less than \$5,000,000 for injury or death of a single person, \$5,000,000 for a single accident, and \$5,000,000 for property damage combined single limit coverage.

B. Environmental Report Requirements. The PILOT Recipient must submit Phase I Environmental Report (“Environmental Report”) with no recognized environmental conditions, for any real property being included in a Lease Agreement, unless waived by the EDGE Board, dated no more than three (3) months prior to the first Lease Agreement closing on developed real property or six (6) months prior to the first Lease Agreement closing on undeveloped real property. All Environmental Reports must explicitly grant to EDGE the right to rely on such reports. All Environmental Reports, which must be certified to EDGE, shall comply with the All Appropriate Inquiries Rule (40 C.F.R. § 312), as amended from time to time, and the following applicable standards designed by the American Society for Testing and Materials (“ASTM”) (all as subsequently amended or modified):

1. Standard Practice for Environmental Site Assessments: ASTM E 1528-06 Assessments;
2. Standard Practice for Site Assessments: Phase I Environmental Site Assessment Process, ASTM E 1527-05; and
3. Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process, ASTM E1903-11.

Subject to the specific provisions of the Lease Agreement, the PILOT Lessee and/or PILOT Recipient shall comply and ensure compliance with all applicable local, state, and federal environmental laws and regulations. In the event that the PILOT Lessee and/or PILOT Recipient discovers or receives notice from any governmental agency with regards to any environmentally hazardous material or condition affecting the PILOT property which is the subject of the Lease Agreement, the PILOT Recipient shall promptly provide written notice thereof to EDGE; shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other related actions required, if any; and shall indemnify and hold harmless EDGE for any and all costs associated therewith, including any costs of testing, remediation and attorney’s fees, if any.

C. Mayor’s Letter. EDGE must receive a letter from the Mayor or Mayors as set forth in Section III.I. recommending approval of the PILOT prior to the closing of the first Lease

Agreement.

D. Architectural Review. EDGE will engage a local architecture firm to review proposals and insure that Projects proposed for Residential PILOTs are of high quality for architecture, construction, building systems and tenant finishes relative to their area and report to EDGE prior to Project Approval. The architect firm shall all confirm that the Project was built to approval plans prior to closing and PILOT lease. EDGE shall pay for all architecture review fees and expenses.

E. Deadlines. EDGE counsel must receive notice of PILOT Recipient's intent to close on a Lease Agreement or Amendment at least thirty (30) days prior to the expected closing date, but in no event later than November 1 of each year if the PILOT Recipient intends for the closing to be effective as of December 31. All Lease Agreements must close by February 15 of the following year in order to be made effective as of the immediately preceding December 31st.

EDGE Counsel will then prepare the necessary documents and submit to the PILOT Recipient for approval and execution.

IX. EVALUATION/COMPLIANCE

To demonstrate that its actions in granting PILOT incentives for specified Projects promote the public good, EDGE requires PILOT Recipients to certify each year that their performance commitments are met, and, if not, to explain fully.

Each year the PILOT Recipient shall provide information in the manner described in the Lease Agreement and complete an Annual PILOT Compliance Report Form ("Annual Report") as approved by EDGE.

Such Annual Reports shall be submitted by the PILOT Recipient to EDGE and its designated agent (if any). To the extent that any agency of the City of Memphis, Shelby County, or the State of Tennessee shall require of EDGE any information or documentation regarding the Project, the PILOT Recipient shall provide or otherwise assist EDGE, as needed, in the production of such information or documentation.

In addition, EDGE retains the right for its Staff and/or its agents to visit and inspect the Project periodically during the PILOT Term, typically once every four (4) years after the Ramp-Up Period, to ensure conformance with statements and representations made in the Lease Agreement. Such inspections shall be made during the Project's regular business hours, after reasonable advance notice (at least 48 hours) has been given. EDGE's costs of such inspections shall be borne by EDGE. If an Annual Report is more than thirty (30) days late, then EDGE shall inspect the Project with the costs of such inspection borne by the PILOT Recipient, in addition to the late filing penalties set forth in Section VII.E.2.

During such inspections, EDGE Staff and/or EDGE's consultants may physically inspect the premises and any improvements thereon, and may require non-proprietary information including, but not limited to, any necessary books, records, and accounts relating to the Project. In addition, unless prohibited by law, EDGE may obtain copies of any and all reports filed by the PILOT

Recipient with the State of Tennessee or any other governmental entity, including, without limitation, reports concerning the employees or business operations of the Project.

EDGE's Staff and/or agents shall have their initial on-site compliance visit and inspection of the Project upon the end of the Ramp-Up Period. During this site visit, if the Capital Investment criteria are met, then the Project will be considered in compliance for Capital Investment purposes for the balance of the PILOT Term.

Upon the expiration of the Ramp-Up Period, if the Local Business Participation Program and other performance requirements by PILOT Recipient do not meet the conditions that the EDGE Board placed on the Project in the Resolution, and/or the PILOT Recipient fails to maintain these requirements during the PILOT Term, the PILOT Recipient shall be deemed to be in default, and action may be taken as provided under these Policies and Procedures and the Lease Agreement, including but not limited to (i) termination of the PILOT Project, or (ii) shortening the PILOT Term.

Staff or the designated agent of EDGE shall provide EDGE, on an annual basis, a compilation of the past year's activities, and the ongoing activities of the Projects operating under the then current Lease Agreements.

X. LOCAL BUSINESS PARTICIPATION PROGRAM

A. Minimum Requirement. In order to encourage growth locally, each PILOT Recipient shall participate in EDGE's Local Business Participation Program. PILOT Recipient must spend with Local Business Participants an amount equal to at least 25% of the PILOT Recipient's hard construction costs and site work plus an amount equal to at least 25% of projected third party contracts (by values) for the on-going management and workforce of the Project must be spent with City and County certified MWBEs ("Minimum LBP Standard"). For the purpose of this Policy, "Local Business Participant" or "LBP" means any business that is certified as a Minority/Woman Business Enterprise ("MWBE") by the City of Memphis or Shelby County government. A vendor shall be recognized as a LBP if included in lists maintained by City of Memphis or Shelby County government for that purpose during the year in which the vendor contract is entered into with or the purchase is made by the PILOT Recipient.

B. Exceptional Performance. Additionally, PILOT Recipient shall receive the following additional years to its PILOT Term for meeting its exceptional LBP Program and maintaining its exceptional LBP Program throughout the entire PILOT Term. The additional years shall be added at the end of the PILOT Term:

1. One (1) additional year:
 - a. If it spends an amount between 35% and 44% of hard construction and site work plus an additional amount equal to or in excess of 30% of the third party contracts with LBPs over the PILOT Term; or
2. Two (2) additional years:

- a. If it spends an amount greater than or equal to 45% of hard construction and site work participation plus an additional participation amount greater than or equal to 30% of the third party contracts with LBPs over the PILOT term.

See Section III.F for maximum limits on PILOT Terms.

C. Enforcement. For enforcement purposes EDGE may reduce (or “clawback”) years from the end of the PILOT Term. The clawback will be a proportional reduction based upon the difference between the required participation terms and the accomplished LBP expenditures with the maximum clawback period being the lesser of (i) twenty percent (20%) of the PILOT Term; or (ii) two (2) years. For example, a PILOT with a 10 year term and the Applicant achieving 90% of the Minimum LBP Standard would result in a 1 year clawback. While an Applicant with a 10 year PILOT achieving 75% of the Minimum LBP Standard would compute to a 2.5 year clawback which would be reduced to a 2 year clawback for enforcement purposes. The evaluation and potential clawback starts in the third year before the expiration of the PILOT Term and for each year thereafter. All claw-back reductions shall be cumulative.

ADOPTED BY THE BOARD OF THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE ON JUNE 21, 2017. AMENDED BY THE BOARD OF THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE ON MARCH 21, 2018 AND FURTHER AMENDED BY THE BOARD OF THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE ON MAY 18, 2022.

By: _____
Al Bright, Jr.
Chairman

ATTEST:

By: _____
Dr. Florence Jones
Secretary