PERSONAL PROPERTY LEASE AGREEMENT
(NIKE TN, INC. – PART OF 3100 NEW FRAYSER BOULEVARD)

This Personal Property Lease Agreement (this “Lease”) is made and entered into as of December 31, 2013 (“Effective Date”), by and between ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE, a public not-for-profit corporation of the State of Tennessee, with an office in Memphis, Tennessee (“Lessor”), and NIKE TN, INC., a corporation organized under the laws of the State of Oregon (“Lessee” and “Applicant”).

RECITALS

A. Lessor owns or will acquire that certain personal property described in Exhibit “A” (the “Personal Property”), which Personal Property is currently located at the property described in Exhibit “B” hereto (the “Real Property”), subject to the permitted encumbrances described in Exhibit “C” (the “Permitted Encumbrances”).

B. Lessor is organized pursuant to the provisions of Sections 7-53-101 to 7-53-316, inclusive, of the Tennessee Code Annotated, as amended (the “Act”), and is authorized thereunder and shall, in order to fulfill its public purpose of contributing to increased employment and increasing manufacturing in Memphis and Shelby County, Tennessee, proceed as expeditiously as practicable to acquire, install, and furnish the Personal Property, acting by and through Lessee as its agent for such work, to the end that Lessee may obtain full use and possession thereof at the earliest practicable date.

C. Pursuant to the provisions of Tennessee Code Annotated Section 7-53-305(b), Lessor has found, and does hereby find, that the PILOT (hereinafter defined) payments provided for herein are in furtherance of Lessor’s public purposes as defined in said section.

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, the sufficiency of which is acknowledged and agreed, intending to be legally bound, LESSOR AND LESSEE AGREE AS FOLLOWS:
AGREEMENT

The Recitals are included herein as if copied verbatim. Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and covenants and agreements hereinafter contained and to be kept and performed by Lessee, does hereby, by these premises, lease and let unto Lessee, for the Term and upon the conditions stated herein, the Personal Property, as more particularly described hereinafter.

ARTICLE I

DEFINITIONS

In addition to words and terms elsewhere defined in this Lease, the following words and terms used in this Lease shall have the following meanings, unless some other meaning is plainly intended or unless defined in the Policies and Procedures, as defined below. In any conflict between the definitions contained in the Policies and Procedures and this Lease, the Lease definitions shall control.


Additional Rent: Defined in Section 4.02 hereof.

Annual Report: The annual performance report required to be filed with Lessor by Applicant in substantially the form attached hereto as Exhibit “F”, as such form may be revised from time to time by Lessor, which report is described in more detail in Section 5.04(b) hereof.

Applicant: NIKE TN, INC., a corporation organized under the laws of the State of Oregon, as identified in the Application.

Application: The application filed by Applicant with Lessor on or about October 8, 2012. Upon reasonable request by Lessor, Applicant shall add or correct an omission in the Application.

Benefit to Cost Ratio: The ratio of the public benefit to the citizens of the County, as measured by new local tax revenues generated for the City and the County as a result of the Project, to the public cost to the citizens of the County, as measured by the City and County ad valorem property tax revenues forgone as a PILOT incentive to the Applicant, as set forth in Exhibit “H”.

Board Counsel: Mark E. Butrelsches, the office of which is located at 999 S. Shady Grove Road, Suite 500, Memphis, Tennessee 38120, and Monice Moore Hagler, the office of which is located at 2650 Thousand Oaks, Suite 2140, Memphis, Tennessee 38118, or such other person as Lessor may hereafter designate in writing to Lessee.
City: The City of Memphis, Tennessee.

Completion of the Installation of the Personal Property: That day upon which the installation of the Personal Property in the Premises has been completed in accordance with Lessee’s plans and specifications, as certified by Lessee.

County: Shelby County, Tennessee.

Diversity Plan: Applicant’s diversity plan attached hereto and incorporated herein as Exhibit “G” or as otherwise approved by Lessor.

Improvements: Improvements to be constructed upon the Real Property and affixed thereto as part of the realty so as to become real property fixtures, as provided for in the Application.

Jobs, Wages and Capital Investments: The following items used in the Project, as otherwise reflected in the Resolution: (i) net new jobs: 250, retained jobs: 1,662; (ii) average wage: $35,000 (includes regular wages, overtime, paid holidays and paid vacations, but no other benefits); and (iii) capital investment: $301,000,000 (includes $167,000,000 in real property improvements and $134,000,000 in tangible personal property additions).

Lender: Any lending institution which has loaned money or extended credit to Lessee which indebtedness or obligations of Lessee are secured by a pledge or other security instrument encumbering the Personal Property or Lessee’s leasehold interest therein, and written notice of the name and address of such Lender has been received by Lessor.

Lessee: The legal entity or natural person identified in the first paragraph of this Lease, or any permitted transferee or assignee pursuant to Section 3.06 below.

Mayors’ Letter: The letter from the Mayor of the County and, if applicable, the Mayor of the City, a copy of which is attached hereto as Exhibit “D”.

Municipality: Any incorporated city or town located in Shelby County, Tennessee, including the City.

Permitted Encumbrances: The encumbrances on the Personal Property, as described in Exhibit “C” attached hereto and incorporated herein.

Personal Property: The personal property described in Exhibit “A” attached to this Lease.

PILOT: The “payment in lieu of taxes” benefits awarded to Applicant by Lessor at a meeting of the board of directors of Lessor, as reflected in the Resolution, the payments for which will be made in accordance with the provisions of Section 6.02 hereof.
Policies and Procedures: Lessor's Policies and Procedures, in effect on the date of approval of the PILOT evidenced by this Lease, a copy of the criteria and matrix contained therein are attached hereto as Exhibit "E".

Premises: The Real Property, together with the Improvements thereupon at the time of the execution of this Lease, or at any time thereafter.

Project: The purchase of the Personal Property, the conveyance of the Personal Property to Lessor, the leasing of the Personal Property by Lessee from Lessor, and the work of installing the Personal Property on the Premises, as well as the expenditure of the Capital Investment, and the creation and maintenance or retention of the Jobs and the Wages and the compliance with all Special Conditions pursuant to the terms of this Lease, as more particularly set out in the Application.

Ramp-Up Period: The period commencing on the Effective Date and ending 4 years or 1 year after issuance of final certificate of occupancy or final phase of the Project thereafter, whichever comes first, at the end of which period Applicant or Lessee shall be responsible for compliance with the Jobs, Wages and Capital Improvements requirements and any Special Conditions set forth in the Resolution.

Real Property: The parcels of real property described in Exhibit "A" attached to this Lease, collectively, which parcels are municipally known as: (i) 5151 Shelby Drive, Memphis, Tennessee 38118 (Tax Parcel No. 09420000065C); and (ii) 3100 New Frayser Boulevard, Memphis, Tennessee 38128 (Tax Parcel No. 09007800023).

Resolution: The portion of the minutes of the meeting of the board of directors of Lessor held on October 17, 2012, including the resolution contained therein, in which the PILOT was referenced, authorized and awarded to Applicant, including all amendments thereto and extensions thereof.

Special Circumstances: Any Special Conditions for which points are granted in Lessor's matrix.

Special Conditions: The conditions of Lessor's approval of the Application as identified in the Resolution.

Term: The term of this Lease, as set out in Article III hereof.
ARTICLE II

ACQUISITION AND INSTALLATION

Section 2.01. Acquisition and Installation of Personal Property.

(a) Lessee shall cause the Project to be undertaken and the Personal Property to be installed in the Premises in accordance with Lessee’s plans and specifications, the Application and the Resolution. In order to accomplish the acquisition and installation of the Personal Property, Lessee is hereby authorized to execute in its own name, without reference to Lessor, all necessary contracts, agreements, purchase orders and related documents. In no event shall Lessor be liable upon any such contracts, agreements, purchase orders or other related documents.

(b) Any development or construction signs located at or on the Real Property shall read: “The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, has provided financial incentives and other assistance for this project.”

Section 2.02. Rights against Contractors, Etc.

(a) Lessee covenants and agrees that it will use commercially reasonable efforts to insure that the Personal Property is installed in the Premises in a good and workmanlike manner. Upon the Completion of the Installation of the Personal Property, upon the request of Lessee, if any of the following inure to the benefit of Lessor, Lessor will assign to Lessee (i) all warranties and guaranties of any and all contractors, subcontractors or suppliers for the furnishing or installation of the Personal Property or any part thereof, and (ii) any and all rights or causes of action against any of the foregoing.

(b) In the event of default of any contractor, subcontractor or supplier under any contract made by Lessee in connection with the Personal Property, Lessee may, at its expense, either in its own name or in the name of Lessor, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor or supplier which Lessee deems reasonably necessary, and in such event Lessor hereby agrees to cooperate fully with Lessee and, at Lessee’s expense, to take all action necessary to effect the substitution of Lessee for Lessor in such action or proceeding. Lessee shall indemnify Lessor from all claims, damages, liability, attorney’s fees, and court costs if Lessee shall prosecute or defend any such action or proceeding or take any other action in Lessor’s name. Any net amounts recovered by Lessor as damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid to Lessee.

Section 2.03. Completion at Lessee’s Expense. Subject to the provisions of Section 9.02 hereof, Lessee agrees to cause the Personal Property to be acquired and installed in or at the Premises and to pay all of the costs thereof and Lessee agrees to complete the acquisition and installation of the Personal Property no later than the time provided in the Application unless the
time to complete the acquisition or installation is extended in writing by Lessor, which extension will not be unreasonably withheld or delayed.

**ARTICLE III**

**TERM AND CONCURRENT AGREEMENTS**

Section 3.01. Term. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, at the rent set forth herein, the Personal Property. Subject to the terms and provisions herein contained, this Lease shall be and remain in full force and effect for a term of 15 years from the date hereof ("Term").

Section 3.02. Use of Project and Compliance with Laws. Lessee shall promptly comply or cause compliance with or obtain waivers of all laws, ordinances, orders, rules, regulations, and requirements of duly constituted public authorities applicable to the Project, at no expense to Lessor, whether or not the same are foreseen or unforeseen, ordinary or extraordinary. Lessee shall throughout the term of this Lease cause the Personal Property to be used in a manner that will constitute a "project" within the meaning of Section 7-53-101 of the Act. Applicant has represented to Lessor in the Application that Applicant will use and operate the Personal Property for the purposes set forth in the Application, create or retain the Jobs at the Wages and make the Capital Investment as approved in the Resolution. Any proposed changes in such use and operation of the Project or the Personal Property must be submitted to Lessor for advance written approval. Pursuant and subject to the provisions of Article IX of this Lease, Lessor reserves the right to terminate this Lease if the use of the Personal Property becomes materially inconsistent with the representations summarized above and as stated in the Application. All such representations in the Application shall be deemed warranties under this Lease and are incorporated herein by reference.

Section 3.03. Contesting Laws. Lessee shall not be required to comply or cause compliance with applicable laws, ordinances, orders, rules, regulations or requirements, so long as Lessee shall give written notice to Lessor and, at Lessee's expense, shall be contesting the same or the validity thereof in good faith and in accordance with applicable law. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, provided notice is first given to Lessor if the contest is made in the name of Lessor. Lessor agrees that it will, at Lessee's expense, cooperate with Lessee therein as Lessee may reasonably request. At Lessor's option, Lessee shall provide Lessor with such security reasonably satisfactory to Lessor to indemnify Lessor from all claims, damages, liability, attorney's fees and court costs if Lessee shall pursue any claim or right in Lessor's name.

Section 3.04. Lessor's Title to Personal Property. Lessor has or will acquire title to the Personal Property subject to the Permitted Encumbrances. Provided that no uncured Event of Default (as defined in Section 9.01 hereof) exists under this Lease, Lessor will not, without the prior written consent of Lessee, directly or indirectly create or consent to the creation or existence of any lien or encumbrance (other than as requested by Lessee in writing) upon the
Personal Property or Lessor's interest therein or convey title to the Personal Property in any manner whatsoever, except as otherwise provided herein or as requested or approved by Lessee in writing.

Section 3.05. Additional Encumbrances; Subordination; Estoppel.

(a) Provided that no uncured Event of Default exists under this Lease and Lessor is notified in writing of the details of any proposed transaction prior to the closing of such transaction, Lessee shall, at all times, have the right to encumber by pledge and security agreement or other proper instrument in the nature thereof its leasehold interest in and to the Personal Property, or portions thereof, provided that any and all such encumbrances of Lessee's leasehold interest shall, at all times be subject to the interest of Lessor (unless subordinated to such encumbrances as hereinafter provided) and shall impose no personal liability on Lessor and further provided that Lessee shall indemnify Lessor against any losses, costs or expenses which Lessor may incur as a result of executing any such encumbrance or subordination agreement requested by Lessee. Upon execution and recordation of any such pledge, security agreement, financing statement or other instrument, Lessor shall be notified in writing that such pledge, security agreement, financing statement or other instrument has been executed and delivered by Lessee and Lessor shall also be furnished with the address of the Lender involved in such encumbrance to which copies of notices are to be mailed. Lessor hereby covenants that it will thereafter contemporaneously mail to such Lender a duplicate copy of any and all notices in writing which Lessor may, from time to time, give or serve upon Lessee under and pursuant to the terms and provisions of this Lease. Unless and until such notice is mailed to such Lender, no action shall be taken by Lessor which would be prejudicial to such pledge, security agreement, financing statement or other instrument in the nature thereof or to the rights of the Lender thereunder. If a Lender requires Lessor to execute any certificate or other closing documents, Lessee shall be responsible to reimburse Lessor's actual expenses, costs and reasonable attorney fees incurred in reviewing closing documents or otherwise expended by Lessor as a result of Lessee's transactions.

(b) Such Lender may, at its option, during the Term hereof, pay any of the rent due hereunder or do any other act or thing required of Lessee by the terms hereof, or do any act or thing which may be necessary and proper to be done in the observance of the covenants and conditions hereof, in order to prevent the termination of this Lease. All payments so made and all things so done and performed, by any such Lender shall be as effective to prevent a termination of the rights of Lessee hereunder as the same would have been if done and performed by Lessee instead of by the Lender. The Lender shall in no event, however, be required to pay the Basic Rent.

(c) If requested by Lessee, Lessor shall subordinate its interest in the Personal Property to any encumbrances placed on the Personal Property in favor of any Lender, and to the rights, title and interest of any Lender in and to the Personal Property, such subordination to be in form and content reasonably requested by Lessee on behalf of such Lender. Additionally, Lessor agrees to execute a pledge or security agreement in favor of such Lender encumbering the
interest of Lessor if required by Lessee. However, in the event of Lessor’s execution of any such subordination, pledge, security agreement or other document, Lessee agrees to pay the reasonable cost and expense of Lessor in connection therewith, including, without limitation, reasonable attorney fees, and to indemnify Lessor against any losses, costs or expenses which Lessor may incur as a result of executing any such document or instrument. Any such encumbrances shall impose no personal liability on Lessor.

Lessor acknowledges that the interests of any Lender in the Personal Property shall take priority at all times to the extent necessary to protect and preserve the existence and priority of the collateral or security interest or other lien rights of such Lender in and to the Personal Property, while at the same time preserving unto such Lender the rights set forth herein and in Section 9.03 of Article IX hereof to cure any defaults of Lessee hereunder in order to keep this Lease, and the PILOT, from being terminated.

Section 3.06. Subletting and Assignment.

(a) Except as provided in Section 3.05, Lessee or Applicant may not assign, sublet or otherwise transfer any of its rights or duties hereunder without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Any such transfer is subject to the Policies and Procedures, including, without limitation, the payment of any transfer fee. A change in the use and operation of the Personal Property from that, which is approved in the Resolution shall be deemed a transfer of the interest, for which Lessor’s prior consent shall be required. Notwithstanding anything to the contrary set forth in this Section 3.06 or any other provision of this Lease, if, as a result of any proposed sublease or assignment, or other transfer, the beneficiary of the PILOT program would be a party other than Applicant, then the consent of Lessor shall be required.

(b) In the event of the termination of this Lease pursuant to the provisions of Article IX hereof, Lessor expressly agrees that such termination shall be subject to all the rights and privileges of any and all permitted sublessees of Lessee under the terms and provisions of their respective subleases so long as each such sublease shall be approved in writing by Lessor and so long as the sublessee under such sublease shall keep and perform all of the covenants and provisions of their respective subleases and shall agree to attorn to Lessor as lessor under the direct lease from Lessor, as hereinafter provided. It is agreed that, in the event of the termination of this Lease pursuant to Article IX hereof, Lessor will thereupon enter into a direct lease of the Personal Property to and for the benefit of such permitted sublessee, upon all of the same terms and provisions herein set forth and contained (including, but not limited to, the use provisions set forth in Section 3.02 hereof, and the payment in lieu of taxes provisions set forth in Section 6.02 hereof) for the balance of the Term of this Lease which would have remained, but for such termination; provided, however, Lessor’s obligation to enter into such direct lease with such permitted sublessee shall be subject to the following conditions: (i) the termination of this Lease shall not have resulted from the failure of such permitted sublessee, as Applicant or otherwise, to perform any of its undertakings and obligations as provided in this Lease or in the Resolution; (ii) no material uncured breach or event of default shall then be existing on the part of such
permitted sublessee, under the sublease, as to which notice has been given and the time for curing (as provided in such sublease) has then expired; (iii) the use of the Personal Property shall be for the purposes set forth and provided in this Lease and as approved in the Resolution; and (iv) the Personal Property and the Project will continue to be used in a manner that will constitute a “project” within the meaning of Section 7-53-101 of the Act.

(c) If Applicant is a general partnership, a change during the Term of this Lease in the identity of any partner from one existing on the date this Lease is executed shall be deemed a change in the identity of Applicant. If Applicant is a limited partnership, a change during the Term of this Lease in the identity of any general partner, or limited partners with, in the aggregate, interests greater than twenty percent (20%) of the partnership, from those existing on the date this Lease is executed shall be deemed a change in the identity of Applicant. If Applicant is a closely held corporation at the time this Lease is executed, a change in the identity of the shareholders who in the aggregate own more than twenty percent (20%) of any class of stock of the corporation from those existing on the date this Lease is executed shall be deemed a change in the identity of Applicant. If Applicant is a limited liability company, a change during the term of this Lease in the identity of members with, in the aggregate, interest greater than twenty percent (20%) of the limited liability company from those existing on the date this Lease is executed shall constitute a change in the identity of Applicant. If Applicant is an entity whose shares are sold or traded publicly at the time this Lease is executed, a change in the identity of the shareholders shall not be deemed a change in the identity of Applicant unless ownership of more than 50% of the interest in such entity shall change ownership in one or a series of transactions. Applicant shall provide Lessor with written evidence of the assumption by such assignee of Applicant’s obligations under the sublease and the agreement by such assignee to be bound by the terms and conditions of this Lease, in form and substance reasonably satisfactory to Lessor.

(d) Lessor hereby covenants that it will contemporaneously mail to any permitted sublessee of Lessee, at the address provided for in Section 15.08 below, or otherwise, a duplicate copy of any and all notices in writing which Lessor may, from time to time, give or serve upon Lessee under and pursuant to the terms and provisions of this Lease. Unless and until such notice is mailed to such sublessees, no action shall be taken by Lessor which would be prejudicial to any such sublease, or to the rights of the sublessee thereunder. If any sublessee requests that Lessor execute any certificate or other documents, such sublessee shall be responsible to reimburse Lessor’s expenses, costs, and reasonable attorney fees incurred in reviewing documents or otherwise expended by Lessor as a result of such sublessee’s transactions.

(e) Any permitted sublessee may, at its option and to the extent permitted by its sublease, at any time before the rights of Lessee shall have been terminated, as provided for herein, pay any of the rent due hereunder or do any other act or thing which may be necessary and proper to be done in the observance of the covenants and conditions hereof; so as to prevent the termination of this Lease. All payments so made and all things so done and performed by such
sublessee shall be as effective to prevent a termination of the rights of Lessee hereunder as the same would have been if done and performed by Lessee instead of by such sublessee.

ARTICLE IV

RENT

Section 4.01. Basic Rent. Lessee shall pay to Lessor at its offices at 100 Peabody Place, Suite 1100, Memphis, Tennessee 38103, or to an agent or trustee designated by Lessor, without notice or demand, as absolutely net basic rental (herein called “Basic Rent”) for the entire Term of this Lease, the sum of One Thousand Five Hundred and No/100 Dollars ($1,500.00), which shall be payable in advance prior to the commencement of the term of this Lease.

Section 4.02. Additional Rent. Lessee shall also pay, as additional rent, those amounts set out in ARTICLE VI hereof and all other reasonable sums which Lessee shall be obligated to pay hereunder, whether or not such sums are specifically designated as additional rent (collectively, the “Additional Rent”). Lessee shall also pay, as Additional Rent, all closing fees and expenses in accordance with the Policies and Procedures, all sums advanced by Lessor for or on behalf of Lessee hereunder. The Additional Rent shall be due by Lessee in accordance with the applicable provisions of this Lease and, if no date is specified, then on demand. If such sums are advanced by a sublessee, such sums shall be credited against any amounts due to Lessee by any such sublessee. Any sums advanced by Lessor for or on behalf of Lessee after an Event of Default hereunder shall bear interest at the highest lawful rate existing on the date of advance.

ARTICLE V

REPRESENTATIONS, WARRANTIES, COVENANTS
AND INDEMNIFICATION OF LESSOR

Section 5.01. Acceptance of Personal Property; No Warranties. Lessee acknowledges and agrees that it has examined and is fully familiar with the Personal Property and recognizes that, because the plans and specifications for the acquisition and installation of the Personal Property have been prepared at its direction and the Personal Property is to be acquired and installed under its supervision, Lessor makes no representation or warranty, either express or implied, and offers no assurance to anyone as to the condition or title of the Personal Property, that the Personal Property will be suitable for Lessee’s purposes or needs or that the funds presently available for the Project will be sufficient to pay in full the cost of the Project. As to Lessor, Lessee accepts the Personal Property in its condition as of the date of the commencement of the Term of this Lease, and assumes all risks, if any, resulting from the failure of the Completion of the Installation of the Personal Property, or the failure to comply with all legal requirements applicable thereto.

Section 5.02. Failure or Defect in Title. Lessor shall not be liable to Lessee or to anyone for any damages resulting from failure or any defect in Lessor's title which interferes with,
prevents or renders burdensome the use or possession of the Personal Property or the compliance by Lessee with any of the terms of this Lease, or from delay in obtaining possession of all or any part thereof, from any cause whatsoever. No such failure of or defect in Lessor's title or delay in possession shall terminate this Lease or entitle Lessee to any abatement, in whole or in part, of Basic Rent, Additional Rent, or any other sums provided to be paid by Lessee pursuant to any of the terms of this Lease.

Section 5.03. Release and Indemnification.

(a) Lessee, for itself, its successors and assigns, hereby releases and forever discharges Lessor, including any incorporator, member, director, officer, employee, counsel or agent of Lessor, its successors and assigns from any claims, demands, causes of action, accounting or any other matter arising in connection with Lessee's possession and use or operation of the Personal Property or the Project; provided, however, that nothing contained herein shall be deemed to release Lessor from its undertakings pursuant to this Lease.

(b) Lessee covenants and agrees, at Lessee's expense, to pay, and to indemnify and save Lessor, and any incorporator, officer, director, agent, counsel or employee of Lessor, harmless, against and from any and all claims by or on behalf of any person, firm, corporation or governmental authority, arising from (i) the use, possession, conduct, or management of or from any work done to or with the Personal Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances or regulations affecting the Personal Property or the use of the Personal Property, (ii) any condition of the Personal Property, (iii) any breach or default on the part of Lessee in the performance of any covenant or agreement to be performed by Lessee pursuant to this Lease, (iv) any act or negligence of Lessee, or any of its agents, contractors, servants, employees or licensees, (v) any accident, injury or damage whatsoever caused to any person, firm or corporation, by the Personal Property, (vi) Lessor's ownership of the Personal Property, (vii) the making of this Lease or any transactions related hereto, and from and against all costs, reasonable counsel fees, expenses, and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section.

(c) Upon notice from Lessor, Lessee shall defend Lessor or any of its incorporators, officers, directors, agents, counsel, or employees (collectively, "Lessor's Agents"), in any action or proceeding brought in connection with any of the above. Lessor shall be entitled to provide its own defense and charge Lessee with its expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

(d) The provisions of this Section shall survive the termination of this Lease.

Section 5.04. Application Representations; Reports.

(a) Lessee and Applicant warrant and represent that they and their sublessee, if any, will comply with all terms and conditions applicable to them in the Resolution, the Mayors' Letter
and the Special Conditions, including without limitation the creation or maintenance of the Jobs at the Wages represented in the Application, the timely completion and use of the Project, the Capital Investment in the Project and the timely compliance with the Special Conditions, all as approved by in the Resolution; provided, however, that Lessee and Applicant shall not be deemed to have breached those warranties and representations as to Jobs, Wages, Capital Investment or Special Conditions unless an uncured Event of Default exists pursuant to Section 9.01(b). Lessee acknowledges that, as provided in the Application and the Resolution, the Jobs, Wages, Capital Investment and Special Conditions in and for the Project are to be commenced by Applicant in the County by the end of the Ramp-Up Period, after which Lessee shall maintain the requirements of the Project for the duration of the Term; provided, also, however, that any jobs derived from merger, loss of contract, significant loss of business or cessation of Applicant’s current operations in the County shall not be counted as new Jobs unless mutually agreed upon by Lessor and Applicant. In order to qualify as new Jobs for the Project, no existing jobs shifted to the Project from another location in the County without Lessor’s approval will be included, nor shall any Job be counted toward the job creation of more than one PILOT project at a time, regardless of whether such Job was shifted to the Project with Lessor’s permission. If Applicant loses any significant contract and notifies Lessor of that fact, Lessor may, in Lessor’s sole discretion, discuss the same with Applicant, and Lessor may allow deductions in Jobs if Applicant can show that the Jobs were lost due to lost written contracts.

(b) On or before January 31 of each year during the Term of this Lease (the “Report Due Date”), Applicant or Sponsor shall, without any additional notice from Lessor, file or cause to be filed with Lessor an Annual Report substantially in the form attached hereto as Exhibit “F” or in such other form as shall be requested from time to time by Lessor upon notice to Applicant containing all information required therein in order for Lessor to determine compliance of Applicant with the terms and requirements of this Lease, the Resolution and the Mayors’ Letter as well as any other information reasonably requested by Lessor to determine such compliance. Each Annual Report shall contain a statement that the Annual Report is after due inquiry true and accurate to the best of their knowledge, information and belief and shall be sworn to and executed under oath by an authorized representative of Applicant before a notary public or other official authorized to administer oaths. Any Lessee or Applicant utilizing a third party vendor to provide the workforce for the Project shall provide a certified report form from the vendor in substantially the form attached hereto as Exhibit “I”. The vendor report shall be in a form approved by Lessor and shall include statements that the agreement with the third party vendor is in writing and is at least one (1) year in duration, that the vendor is in material compliance with all civil rights, labor and immigration laws, and any other information reasonably requested by Lessor. The vendor report shall be filed with the Annual Report.

(c) Lessee and Applicant agree that Lessor shall have the right during business hours, upon reasonable advance notice to Lessee or Applicant, to inspect the Personal Property and to require information, including but not limited to the necessary books, records and accounts related to the Project of either or both of Applicant and Sponsor, to determine compliance with the provisions of Section 5.04 hereof and the accuracy of any Annual Report.
Applicant and Sponsor hereby authorizes Lessor, its agents, servants, employees and representatives, to inspect the Project and the Personal Property at any time during normal business hours. Applicant further authorizes Lessor to obtain copies of any and all reports filed by Applicant or Sponsor with the State of Tennessee or any other governmental entity, including, without limitation, reports concerning the employees or business operations of the Project.

(d) If Applicant or Sponsor fails to file the Annual Report by the Report Due Date, Lessee shall also pay, as Additional Rent 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.

(e) Lessee shall comply with any now or hereafter enacted reporting requirement of the Act, including, without limitation, the report required by Tennessee Code Annotated Section 7-53-305(f). Lessee shall provide a copy of the compliance report filed with the Tennessee State Board of Equalization (due on October 1) by October 15 of each year.

Section 5.05. Authorized Use. The Personal Property shall be used for the purposes set forth in the Application and the Resolution. Lessee hereby covenants and agrees that the Personal Property shall, during the Term, be used only and exclusively for lawful and moral purposes, and no part of the Personal Property shall be used in any manner whatsoever for any purpose in violation of the laws of the United States, the State of Tennessee, or the ordinances and laws of the City and the County.

Section 5.06. Minimum Wages and Benefits. All persons working on the Project must make at least Ten and No/100 Dollars ($10.00) per hour. Additionally all Project workers must at a minimum receive medical benefits where Applicant pays at least fifty percent (50%) of the cost of the insurance program. Applicant shall certify its compliance with this Section 5.07 in its Annual Report.

Section 5.07. Title VI Compliance. Applicant shall materially comply with all obligations applicable to Applicant contained in Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000 d) and the rules and regulations related thereto.

Section 5.08. Shelby County Ethics Code Compliance. Applicant shall comply with all obligations applicable to Applicant contained in the Shelby County Ethics Code, as amended from time to time after written notice from Lessor of any modifications.

Section 5.09. Diversity Plan. Applicant shall comply with all obligations contained in the Diversity Plan, as approved by Lessor.

Section 5.10. Benefit to Cost Ratio. Applicant represents that, to the best of its knowledge, the information utilized in the Benefit to Cost Ratio analysis performed by Lessor, as
set forth in Exhibit “H” hereto, specifically including any such information taken from the Application, is based on true and accurate data consistent with the intentions of Applicant with respect to the Project.

ARTICLE VI

TAXES, OTHER CHARGES AND EXPENSES OF LESSOR

Section 6.01. Agreement to Pay Additional Rent. Lessee agrees to pay and discharge, as Additional Rent, during the Term hereof, punctually, as and when the same shall become due and payable:

(a) Each and every cost, expense, and obligation of every kind and nature, foreseen or unforeseen, for the payment of which Lessor or Lessee is or shall become liable by reason of their interests in the Personal Property or any portion thereof, by reason of any right or interest of Lessor or Lessee in or under this Lease, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding or use of the Personal Property or the requirements of this Lease.

(b) All taxes of every type and description, utility charges, assessments (including, but not limited to, assessments for public improvements or benefits), payments in lieu of taxes and all other impositions and charges of every kind and nature, extraordinary or ordinary, general or special, which at any time during the Term shall be or become due and payable by Lessor or Lessee which shall be levied, assessed or imposed in connection with the Personal Property or the Project.

(c) All charges for gas, water, sewer, electricity, light, heat, power, telephone and other utilities and services used, rendered or supplied to or in connection with the Personal Property.

(d) The reasonable post closing costs of Lessor and reasonable out of pocket expenses, including without limitation reasonable attorneys’ fees, which are incurred by Lessor in connection with administering the Personal Property and the Project or performing any act which it is required to do or deems necessary under this Lease, all of which shall not exceed Two Thousand Dollars ($2,000) per annum without the prior written consent of Applicant.

(e) All of Lessor’s closing costs and reasonable expenses incurred, if any, in connection with the acquisition of the Personal Property by Lessor.

Lessee covenants to furnish to Lessor, promptly upon request, proof of the payment of any amount or charge required to be paid by Lessee hereunder. Furthermore, Applicant shall pay all fees and charges as required by the Resolution and the Policies and Procedures.

Section 6.02. Payments in Lieu of Taxes.
(a) Each year during the Term hereof, Lessee shall make PILOT payments as Additional Rent, in lieu of County and City ad valorem taxes, in amounts computed as indicated below:

<table>
<thead>
<tr>
<th>Period</th>
<th>Basis of Computation/Proportion of Taxes Otherwise Due and Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>From the effective date of this Lease until the 15th anniversary of said effective date</td>
<td>(i) For the PILOT payment in lieu of County taxes, One Hundred and No/100 Dollars ($100.00); plus twenty-five percent (25%) of the then current tax assessment for each year which would exist if the Personal Property were owned by a tax paying entity, times the then current millage rate.</td>
</tr>
<tr>
<td>From the 15th anniversary of the effective date of this Lease until termination of this Lease and the reconveyance of the Personal Property to Lessee pursuant to the provisions of this Lease.</td>
<td>(ii) For the PILOT payment in lieu of City taxes, One Hundred and No/100 Dollars ($100.00); plus ten percent (10%) of the then current tax assessment for each year which would exist if the Personal Property were owned by a tax paying entity, times the then current millage rate.</td>
</tr>
<tr>
<td>For the PILOT payment in lieu of both County and City taxes, the then current tax assessment that would exist if the Personal Property were owned by a tax paying entity, times the then current millage rates.</td>
<td></td>
</tr>
</tbody>
</table>

(b) In no event shall such PILOT payments be less than the amount of ad valorem taxes that were due and payable on the Personal Property for the period immediately preceding the date of acquisition by Lessor, except in the event of a Corporate Headquarters (as defined in the Policies and Procedures) project or a partial assessment. The PILOT payments shall be paid in the same manner and to the same tax collectors as are ad valorem taxes paid in the County, the City or any other Municipality. Lessee shall have the right, in the name of Lessor, at its sole expense and without any expense to Lessor, to seek and prosecute an adjustment, by appeal or otherwise, of any tax assessment that is made by the tax assessor, and is applicable to the Personal Property. Notwithstanding the foregoing or any other provisions of this Lease, however, it is the express intention of the parties hereto that, pursuant to the provisions of Tennessee Code Annotated Section 7-53-305, the Personal Property and the leasehold interests therein of Lessee, or any sublessee, shall be exempt from all taxation in the state of Tennessee, and that the PILOT payments as provided for in this Section 6.02 shall be made by and accepted from Lessee in lieu of all ad valorem taxes which
are or may be assessed against the Personal Property and the leasehold interests therein of Lessee or any sublessee for and during the term of this Lease. If, following an Event of Default, the Personal Property should legally be placed on the ad valorem tax rolls of the County, the City or any other Municipality, the payment in lieu of taxes shall terminate and Lessee shall pay ad valorem taxes as required of a tax-paying entity. In the event Lessee's leasehold interest, but not Lessor's fee interest, shall become subject to ad valorem taxation, the payment in lieu of taxes called for hereunder shall continue, but shall be reduced on a cumulative basis by the amount of ad valorem taxes paid by Lessee with regard to its leasehold interest in the Personal Property. In the event the payment in lieu of taxes obligation terminates, Lessee shall still have the right to exercise its option set forth in Section 11.01 hereof. In such event, the provisions of Sections 11.01 and 11.03 shall apply and Lessor shall reconvey the Personal Property to Lessee, subject to any then existing indebtedness created or incurred by or at the request of Lessee; and Lessee shall pay to Lessor, as consideration therefor, the payment provided for in Section 11.01 hereof.

(c) All tax bills for payments in lieu of taxes as provided for in Section 6.02 shall be sent to Lessee at Nike, Inc., Attn: Al Logan, Tax Manager, One Bowerman Drive, Beaverton, Oregon 97005, or to such other entity or address as Lessee may hereafter designate and provide to the tax collectors.

(d) In the event that the Premises is not, at the commencement of the Term hereof, situated within the City or some other Municipality so as to cause the Personal Property to be subject to ad valorem taxation as a part of a Municipality, but subsequently, by annexation, incorporation or otherwise, becomes part of a Municipality during the Term, then Lessee shall make additional payments in lieu of taxes, as Additional Rent, in lieu of the ad valorem taxes of the Municipality from and after the effective date of the annexation or incorporation of the Premises into the Municipality, such payments to be billed to Lessee, and paid by Lessee to the appropriate tax collector for the Municipality, upon the same terms and conditions and in the same manner as provided for the PILOT payments provided in Section (a) above as to PILOT payments in lieu of Municipality taxes. Notwithstanding the above, this Lease shall not provide benefits binding any Municipality for any Premises located in an unincorporated area of the County that is in an annexation reserve area of a Municipality. However, upon annexation, any portion of the Premises located in a City annexation reserve area shall automatically be included in the PILOT program of Lessor pursuant to the terms of this Lease with an additional closing fee assessed.

(e) The PILOT payments shall be due and payable on the same dates as ad valorem tax payments are due to the County, the City 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 Lessee 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.
(f) The PILOT payments shall be a lien on the Personal Property, which lien and PILOT obligation shall be enforceable in the same manner as ad valorem taxes.

(g) Lessee has the affirmative obligation to pay the PILOT payments due under this Lease. Lessor shall have no obligation to notify Lessee of any PILOT payments due under this Lease, the non-payment or delinquency of such payments or any interest or penalties resulting from the delinquency or non-payment of any such payments. Lessor shall also have no obligation to notify Lessee of any assessment or reassessment of the Personal Property, or any appeal of such assessment or the results thereof.

Section 6.03. Other Taxes, Assessments, or Other Charges. Except as provided for in Section 6.02, but subject to Lessee’s right to reduce its payments in lieu of taxes pursuant to Section 6.02 hereof in the event Lessee’s leasehold interest becomes subject to ad valorem taxation, in the event any local, state, or national governmental body or agency enacts or imposes any tax, assessment, or other charge on personaly or leasehold interests which are not in existence or collected as of the date of this Lease, Lessee shall pay said tax, assessment, or other charge as Additional Rent under this Lease and said tax, assessment, or other charge, if based on the assessment assigned to personaly, shall be calculated on an assessment determined as though the Personal Property were owned by a tax-paying entity.

Section 6.04. Survival. The obligations of Lessee to pay any amount due at the termination of this Lease pursuant to this Article VI, shall survive the termination of this Lease.

ARTICLE VII

INSURANCE

Section 7.01. General Requirements. All insurance required hereby shall (i) be placed with responsible insurance companies qualified to do insurance business in Tennessee and against which Lessor has no reasonable objection, (ii) be evidenced by certificates filed with Lessor, (iii) be in form and substance reasonably acceptable to Lessor, (iv) contain an undertaking by the respective insurers that such policies shall not be modified or canceled without prior written notice given to Lessor, (v) provide that the proceeds of such insurance shall be payable to Lessor and Lessee as their respective interests may appear, and (vi) to the extent obtainable, provide that any loss shall be payable to Lessor notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance. It is understood that, at Lessee’s option, such proceeds shall either be made available for the repair or restoration of the Personal Property, or paid to Lessee upon its exercise of its option to purchase the Personal Property set forth in Article XI hereof. Notwithstanding the foregoing, Lessor’s or Lessee’s entitlement to insurance proceeds shall be subject to the rights of any Lender holding any encumbrance upon, or security interest in, the Personal Property or Lessee’s interest in the Personal Property and to the rights of any sublessee under a permitted sublease pursuant to Section 3.06.
Section 7.02. Fire and Extended Coverage. Lessee shall at its expense and as the payment of Additional Rent keep the Personal Property insured against loss or damage by fire and earthquake, with an extended coverage endorsement for such other hazards as are normally covered by such endorsement at the full insurable value of the Personal Property.

Section 7.03. Public Liability Insurance. Lessee shall, at its expense and as the payment of Additional Rent, maintain comprehensive general public liability insurance naming Lessor as an additional insured against claims for bodily injury, death, or property damage occurring on, in or about the Premises in an amount of not less than $5,000,000.00 for injury or death of a single person, $5,000,000.00 for a single accident, and $5,000,000.00 for property damage combined single limit coverage. This requirement may be met by furnishing more than one policy provided that the total coverage is in the amounts specified. Lessor shall be furnished with certificates of such insurance as well as evidence of payment of the premiums therefor.

Section 7.04. Renewal. Not less than ten (10) days prior to the expiration dates of the policies, certificates of the renewal thereof, reasonably satisfactory to Lessor shall be deposited with Lessor.

Section 7.05. Blanket Insurance Coverage. Lessee may maintain the insurance required under this Lease through a blanket insurance policy or policies acceptable to Lessor. Lessee will furnish to Lessor certificates of such insurance coverage acceptable to Lessor.

ARTICLE VIII

MAINTENANCE, REPAIR AND REPLACEMENT

Section 8.01. Lessee's Agreement to Maintain and Repair. Lessee acknowledges it received the Personal Property in good order and condition and agrees that, at its expense, Lessee will keep and maintain the Personal Property in good repair and condition, reasonable wear and tear and damage by fire or other casualty being expressly excepted. Lessee shall promptly make or cause to be made all ordinary and extraordinary, foreseen and unforeseen, repairs, including the maintenance, repair and replacement necessary to keep the Personal Property in good repair and operating condition to the end that the Personal Property is kept in good and lawful order and condition, wear and tear from reasonable use and damage by fire or other casualty expressly excepted, whether or not such repairs are due to any laws, rules, regulations or ordinances hereinafter enacted which involve a change of policy on the part of the governmental body enacting the same. All permanent replacements, renewals, attachments and accessories made to, placed on or affixed to any part of the Personal Property shall become a part of the Personal Property and the property of Lessor as made; provided, however, that in the event that the Personal Property is transferred to Lessee, whether as a result of the exercise by Lessee of its right to purchase pursuant to Article XI hereof, or otherwise, any bill of sale, deed or instrument of transfer shall include not only the Personal Property, but also all such replacements, renewals, attachments and accessories as aforesaid.
Section 8.02. Lessor's Repairs. Upon an Event of Default, Lessor may, but shall not be required to, make any repairs, replacements or renewals of any nature or description in connection with this Lease or maintain the Personal Property in any way. Lessee expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of Lessor. If Lessor shall (in its sole discretion) advance funds with which to make such repairs, replacements, renewals, or other expenditures, such sums shall be payable by Lessee as Additional Rent hereunder pursuant to Section 4.02 above.

Section 8.03. Replacements/Additions to Personal Property. Subject to Sections 2.01 and 3.02 hereinabove, Lessee shall have the right to make replacements of, additions to, alterations of, and improvements to the Personal Property, and to modify all of the above at its expense, as it in its discretion may determine appropriate, provided, however, that the same shall not materially decrease the value of the Personal Property or materially change the use thereof and further provided that any replacement, addition or alteration which increases the value of the Personal Property in excess of One Hundred Ten Percent (110%) of the value of the Personal Property conveyed to Lessor immediately prior to the effective date of this Lease must be approved by Lessor. All work done in connection with such additions, alterations or improvements shall be done promptly and in good workmanlike manner. Lessee shall have no obligation to restore or return the Personal Property to its original condition. The cost of such replacements, additions, alterations or improvements shall be paid for by or through Lessee. In the event Lessee determines to replace any item of Personal Property, Lessee shall deliver to Lessor a bill of sale conveying title to the replacement item to Lessor and, upon receipt thereof, Lessor shall deliver to Lessee (or to Lessee's designee) a bill of sale (as provided for in Section 11.03 hereof) for the item being replaced. Upon the expiration or termination of this Lease, all such replacements, additions, alterations or improvements shall remain and shall belong to and be the property of Lessor, subject, however, to Lessee's option to purchase under Section 11.01 hereof.

Section 8.04. Lessee's Other Personal Property. Lessee or its permitted sublessee may at any time or times during the Term hereof install or commence the installation of any machinery, equipment, furnishings, trade fixtures, and other personal property owned by Lessee or its permitted sublessee, to such extent as Lessee may deem desirable, provided, however, that such installation shall not be permitted to interfere with the use and operation of the Project as set forth in the Application and approved in the Resolution.

Section 8.05. Removal of Other Personal Property. In the event Lessee or its permitted sublessee determines that any items of Personal Property installed pursuant to Section 8.04 have become inadequate, obsolete or worn out and that the removal thereof will not interfere with the operation or substantially decrease the use of the Project for the purposes of this Lease, Lessee may remove such items of Personal Property from the Premises and sell, trade in, exchange or otherwise dispose of the same.
ARTICLE IX

DEFAULT; REMEDIES

Section 9.01. Events of Default. If any one or more of the following events (herein called “Events of Default”) shall happen, this Lease may, subject to the provisions of Section 9.04(d), be terminated, at the option of Lessor without demand or notice except as provided herein:

(a) If default shall be made in the due and punctual payment of Basic Rent or Additional Rent for more than thirty (30) days after written notice to Lessee from Lessor that such rent has become due and payable and is unpaid.

(b) If default (to the extent provided in the following subsections (i), (ii), (iii) and (iv) of this Section 9.01(b)) shall be made by Applicant in its representations and warranties contained in the Application or in Section 5.04(a) of this Lease dealing with the creation or maintenance of Jobs, Wages and Capital Investment or the compliance with the Special Conditions, and such default is not cured within the cure period as set out hereinafter, to-wit:

(i) If Lessee or Applicant shall fail, within the Ramp-Up Period, to create or maintain the number of Jobs required by the Resolution to be created or retained by the Project or such Jobs are not maintained thereafter from year to year during the entire Lease Term; or

(ii) If Lessee or Applicant shall fail, within the Ramp-Up Period, to achieve and to pay the total Wages for the Jobs required by the Resolution to be created or retained in conjunction with the Project or to maintain thereafter that level of Wages throughout the Term; or

(iii) If Lessee or Applicant shall fail, within the Ramp-Up Period, to contribute the total Capital Investment to the Project, or cause such contribution to be made, as required by the Resolution; or

(iv) If Lessee or Applicant shall fail, within the Ramp-Up Period, to comply with any of the Special Conditions.

Upon determination by Lessor that Lessee or Applicant is in default as specified in this Section 9.01(b), Lessor shall give written notice of such default to Lessee and to Applicant and Lessee and Applicant shall have a period thereafter of sixty (60) days in which to cure such default, except in the case where a Lessee has been in default pursuant to Section 9.01(f) within the same calendar year in which case the cure period for this Section 9.01(b) shall be for thirty (30) days from the written notice of the 9.01(b) default. No Event of Default shall be deemed to have occurred under this Subsection 9.01(b) so long as the Project would, under the Policies and Procedures, qualify for PILOT incentives no less than those provided in Section 6.02 of this Lease, as the same would be determined taking into consideration the totality of the Jobs, Wages,
Capital Investment and Special Conditions then actually created or being maintained or contributed (as the case may be) by Lessee and Applicant. Notwithstanding the above, the rescoring of Wages for this Subparagraph 9.01(b) shall be scored using the current Shelby County per capita income (“PCI”) at the time of the Event of Default. If Lessor determines that Lessee or Applicant is diligently pursuing cure of a default under this Section 9.01(b), Lessor may, in its sole but reasonable discretion, extend the time to cure such default or defaults.

(c) If any material representation or warranty made by Lessee or Applicant herein or in the Application, or in any statement or certificate furnished by Lessee or Applicant either required hereby or in connection with the execution and delivery of the Application or this Lease, is untrue in any material respect as of the date of the issuance or making thereof, this Lease may be terminated by Lessor upon five (5) days written notice. A statement by Applicant of the Jobs, Wages or Capital Investment to be included in the Project set forth in the Application shall not be considered a violation of this Section 9.01(c) if such statement is a statement of the reasonable expectations of Applicant on the date of the Application and on the date of this Lease.

(d) If Lessee or Applicant shall fail to occupy the Premises, or shall abandon the Premises or shall cease substantial operations at the Premises, or shall abandon the Personal Property and such acts or omissions shall remain uncured for more than thirty (30) days or Lessee or Applicant shall cease to operate the Project or abandon same for a period of thirty (30) days in which event Lessor may cancel this Lease on a thirty (30) days written notice to Lessee or Applicant. Lessee and Applicant shall give Lessor at least thirty (30) days written notice of its intention to abandon or terminate the Project or cease operations at the Premises.

(e) Lessee’s or Applicant’s failure to complete installation of the Personal Property by the expiration of the Ramp-up Period or other time required by the Resolution.

(f) Failure of Lessee or Applicant to file on time any Annual Report required under Section 5.04 hereof and the continuance of any such failure for more than thirty (30) days after written notice by Lessor to Lessee and to Applicant and Sponsor; or if any information contained in any such Annual Report is untrue in any material respect.

(g) The occurrence of a default or an Event of Default (including, in any case, the expiration of any permitted period for the curing of any such default) under any other agreement between Lessor and Lessee, Applicant or any sublessee of the Personal Property, or any default under any document executed by Lessee related to the Project or the Personal Property, including, without limitation, any pledges or other security documents encumbering the Personal Property, any of which such default or Event of Default causes the Project to be disqualified as, or cease to constitute, a “project” within the meaning of Section 7-53-101 of the Act.

(h) Any material change in the use or operation of the Personal Property or the Project from that set forth in the Application, as approved in the Resolution, without the prior written consent of Lessor.

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(i) The failure of Lessee or Applicant to continuously operate a going business on the Premises in such a manner as to cause an uncured Event of Default pursuant to Section 9.01(b)(i), (ii), (iii) and (iv).

(j) The failure of Lessee and Applicant to maintain a Benefit to Cost Ratio of at least 1:1 at any time during the Term.

(k) The appointment by any court or under any law of a receiver, trustee or other custodian of the Personal Property, assets or business of Lessee, Applicant or Sponsor and the failure to have the same released or terminated within sixty (60) days after such appointment.

(l) The assignment by Lessee of all or any substantial part of its property or assets for the benefit of creditors and the failure to have such assignment released or terminated within sixty (60) days after such assignment.

(m) The levy of execution, attachment or other taking of a substantial part of the property or assets of Lessee or Applicant, or of the leasehold interest of Lessee or Applicant in the Personal Property by process of law or otherwise in satisfaction of any judgment, debt or claim, and the failure to have the same released or terminated within thirty (30) days after such levy of execution, attachment or other taking.

(n) Subject to the provisions of Article XI of this Lease, Lessee’s failure to surrender immediate possession of the Personal Property to Lessor or Lessor’s designee, upon expiration of the Term or such earlier termination as may be provided hereunder.

(o) The filing by or against (which involuntary filing is not dismissed within sixty (60) days of filing) Lessee, Applicant, or Sponsor of a petition for relief under the United States Bankruptcy Code or any proceeding for debtor or creditor relief.

(p) Failure to comply with Section 15.17, National Corporate Headquarters Termination, if applicable, and the continuance of any such failure for more than thirty (30) days after receipt of written notice thereof, if applicable.

(q) Failure to give any notice required under this Lease or the Resolution to be given to Lessor by Lessee or Applicant.

(r) Lessee or Applicant shall be in default under any lease or agreement with Lessor concerning or relating to the Project.

(s) If default shall be made by Lessee or Applicant in the due performance of or compliance with any of the terms of this Lease, and such default shall continue for thirty (30) days after Lessor shall have given Lessee or Applicant written notice of such default unless another cure period is specifically provided herein; or, in the case of any such default which cannot with due diligence be cured within such thirty (30) day period, if Lessee or Applicant or
Sponsor shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any default not susceptible of being cured with due diligence within the thirty (30) days that the time of Lessee or Applicant within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with due diligence as determined by Lessor in its sole discretion.

Section 9.02. Force Majeure. The provisions of Sections 9.01 and 2.03 are subject to the limitation that, if by reason of force majeure, as defined below, either Lessee or Applicant is unable, in whole or in part, to carry out its agreements and covenants herein contained, other than its obligation to pay Basic Rent, Additional Rent, payments in lieu of taxes as provided in Section 6.02 hereof and any other monetary obligations under this Lease, then neither Lessee nor Applicant shall not be deemed in default during the continuance of such inability.

The term “force majeure” as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, order of any kind of the government of the United States or the State of Tennessee, or any of their departments, agencies, or officials, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbance, explosions, breakage or accident to machinery, transmission pipes, or canals, partial or entire failure of utilities or any other cause or event not reasonably within the control of Lessee or Applicant.

Lessee and Applicant, respectively, agree, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee and Applicant from carrying out their respective agreements and covenants, provided that the settlement of strikes, lockouts and other disturbances shall be entirely within the discretion of Lessee, Applicant or Sponsor (as the case may be) and they shall not be required to make settlement of strikes, lockouts and other disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of Lessee, Applicant or Sponsor (as the case may be) unfavorable to them.

Section 9.03. Rights to Cure. Except with respect to the matters set forth in Section 9.01(b) above (as to which matters the rights set forth in Section 9.04(d) shall solely govern and apply), if Lessee, Applicant or Sponsor at any time shall fail to make any other payment or perform any other act on its part to be made or performed under this Lease such that an Event of Default (as defined in Section 9.01) shall have occurred and then be uncured, Lessor (or Lender or any permitted sublessee) may (but shall not be obligated to), upon five (5) days prior written notice to Lessee, Applicant and Sponsor and without waiving or releasing them from any obligations or defaults hereunder, make any such payment or perform any such act for their account and at their expense, and may enter upon the Premises for that purpose and take all such action thereon as may be reasonably necessary therefor. No such entry shall be deemed an eviction of Lessee. All sums so paid by Lessor (or by Lender or any permitted sublessee) and all necessary and incidental costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) incurred in connection with the performance of any such act by Lessor (or by Lender or any permitted sublessee), together with interest at the highest legal rate per annum
from the date of the making of such payment or the incurring of such costs and expenses by
Lessor (or by Lender or any permitted sublessee), shall be deemed Additional Rent hereunder
and shall be payable by Lessee, Applicant or Sponsor (as the case may be) to Lessor or to Lender
on demand or credited against any sums due to Lessee from such permitted sublessee (as the case
may be), and Lessee, Applicant or Sponsor (as the case may be) covenant to pay any such sum
or sums with interest at the rate stated above.

Section 9.04. Lessor's Rights Upon Default.

(a) Except as herein expressly otherwise provided, if an Event of Default occurs and
shall be continuing for a period beyond the time allowed hereunder for curing said default,
Lessor may exercise its right to terminate this Lease under Section 9.01 and without further
notice may repossess the Personal Property; provided, however, that such remedies shall be
exercised lawfully and in a manner which is not in contravention of the laws of the State of
Tennessee.

(b) Except as herein expressly otherwise provided, if an Event of Default occurs and
shall be continuing for a period beyond the time allowed hereunder for curing said default,
Lessor shall also, prior to the expiration of the Term of this Lease and without any obligation on
the part of Lessor to terminate this Lease, have the right of repossession and removal, after not
less than fifteen (15) business days prior written notice to Lessee, Applicant and Sponsor of its
intent to exercise such right and specifying the nature of the Event of Default, provided that such
right shall be exercised lawfully and shall not be exercised in any manner in contravention of the
laws of the State of Tennessee. In the event of the exercise of such right, without termination of
this Lease, the Lease shall continue in full force and effect for the balance of its Term except that
Lessee shall have no right of possession from the date of the exercise of such right; provided that
the exercise of such right shall not preclude the subsequent exercise of any other right under this
Lease, including the right of termination pursuant to Section 9.01 hereof. Lessor shall be under
no liability for or by reason of any such lawful repossession or removal.

(c) Lessee covenants and agrees to pay, and to indemnify Lessor from and against, all
costs and charges, including reasonable counsel fees, lawfully and reasonably incurred in
obtaining possession of the Personal Property after default by Lessee or upon expiration or
earlier termination of the Term hereof, or enforcing any covenant or agreement of Lessee
contained in this Lease.

(d) In the event of the occurrence of an Event of Default described in Section 9.01(b)
hereof, this Lease shall not be terminated, so long as Lessee or Applicant complies with the
provisions of this Section 9.04(d), but Lessor shall have the option, as hereinafter provided, to
make a re-evaluation and adjustment (a “PILOT Adjustment”) of the PILOT incentives provided
in Section 6.02 of this Lease, and to amend Section 6.02 hereof accordingly. Any PILOT
Adjustment, if made by Lessor, shall be based only upon the criteria of Jobs, Wages, Capital
Investment and Special Conditions actually created, paid or made with respect to the Project.
Notwithstanding the above, any Special Condition that is not a Special Circumstance shall be
considered on a case by case basis for any PILOT Adjustment; but, in no event shall the PILOT Adjustment for a Special Condition that is not a Special Circumstance be for more than a two (2) year adjustment more than the total rescoring of the other rescoring items. Additionally, the rescoring of Wages for this Subparagraph 9.04(d) shall be scored using the current PCI at the time of the Event of Default. Any such PILOT Adjustment shall be made so as to produce and reflect from and after the effective date of the Event of Default (which includes any period allowed hereunder for the curing of any such default) the maximum PILOT Incentive (the “Adjusted PILOT Incentive”) for which the Project would have been qualified or entitled under Lessor’s Policies and Procedures. In the event Lessor determines to make a PILOT Adjustment, Lessor shall notify Lessee, Applicant and Sponsor and afford Lessee, Applicant and Sponsor the opportunity to present such additional information with respect to the Project and to the proposed PILOT Adjustment, as may be appropriate to the determination, and Lessee, Applicant or Sponsor (as the case may be) shall promptly furnish such information as Lessor may request in connection with the making of such determination. Subject to the foregoing provisions, the decision of Lessor as to the Adjusted PILOT Incentive shall be in the sole discretion of Lessor. In the event that any PILOT Adjustment results in a determination that the PILOT incentives provided in Section 6.02 of this Lease are greater (with respect to the length of the Term of this Lease) than the Adjusted PILOT Incentive, then Lessor and Lessee shall enter into an amendment of this Lease to reflect such adjustment. In addition, Applicant shall thereupon pay (or cause to be paid) to the appropriate tax collectors, as an additional payment in lieu of taxes under Section 6.02 hereof, an amount (hereinafter called the “Recapture Payment”) equal to the difference, if any, between (i) the total amount of the payments in lieu of taxes actually paid by or for the account of Lessee under Section 6.02 hereof for the period (hereinafter called the “Recapture Period”) following the occurrence of such Event of Default and until the amendment of this Lease, as aforesaid, and (ii) the total amount of the payments in lieu of taxes for which Lessee would be obligated under the Adjusted PILOT Incentive for the Recapture Period (it being acknowledged that from and after the amendment of this Lease pursuant to the foregoing provisions, Lessee will be making payments in lieu of taxes based upon the Adjusted PILOT Incentive). It is the intention of the parties, by the foregoing provisions, to provide that, after the effective date of the Event of Default, Lessee and Applicant shall not receive any greater PILOT incentives than they are entitled to as aforesaid. The obligation for any Recapture Payment required pursuant to this Section 9.04(d) shall survive the termination of this Lease and such obligation shall be a lien on the Personal Property and enforceable by any and all remedies available to enforce the payment of personal property taxes. Applicant and Sponsor hereby consents and agrees that any action or proceeding to enforce any of their obligations or to collect any payments due from them may be brought in the courts of the State of Tennessee in Shelby County, Tennessee, or in the courts of the United States of America for the Western District of Tennessee.

(e) If Applicant fails to exercise good faith in its attempt to satisfy the goals of its Diversity Plan, Lessor shall determine, in its reasonable discretion, if the Term of the Project should be adjusted to reflect said lack of good faith. In the case of any default attributable to a failure to satisfy the goals of the Diversity Plan, Applicant shall be given written notice of the default
followed by sixty (60) days in which to cure the default pursuant to Section 9.01(s) hereof before further action is taken by Lessor.

(f) All of Lessor’s rights under this Section 9.04 are subject and subordinate to Lessee’s purchase option set forth in Article XI.

Section 9.05. Reletting. Except as otherwise provided herein, at any time or from time to time after the expiration of the Term pursuant to Section 9.01, Lessor may, (but shall be under no obligation to) relet the Personal Property or any part thereof for the account of Lessee, in the name of Lessee or Lessor, or otherwise without notice to Lessee, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), on such conditions and for such uses as Lessor in its discretion may determine; and Lessor may collect and receive the rents therefor. Lessor shall have the same right to relet if it shall exercise its right of repossession or removal without termination of this Lease as provided in Section 9.04(b) hereof. Lessor shall not be responsible or liable for any failure to relet the Personal Property or any part thereof, or for any failure to collect any rent due upon any such reletting. Any such reletting pursuant to this Section 9.05 shall, in all events, be subject to and expire upon the exercise of Lessee’s purchase option set forth in Article XI hereof.

Section 9.06. Survival of Lessee’s and Applicant’s Obligations. No termination of this Lease pursuant to Section 9.01 hereof or repossession of the Personal Property pursuant to Section 9.04 hereof, or otherwise, shall relieve Lessee and Applicant of their respective liability and obligations hereunder due or accrued on the date of such termination or repossession or of any liabilities or obligations which are expressly provided in this Lease to survive any such termination or repossession, all of which shall survive any such termination or repossession. In the event of the termination of this Lease pursuant to Section 9.01 or in the event that Lessor shall exercise its right of repossession without termination of the Lease as provided in Section 9.04(b), Lessee shall pay to Lessor the Basic Rent and all Additional Rent and other charges required to be paid, and not theretofore paid, under this Lease or otherwise, by Lessee up to the time of such termination or repossession; and thereafter Lessee, until the end of what would have been the Term of this Lease in the absence of such termination or repossession and whether or not the Personal Property or any part thereof shall have been relet, shall be liable for and shall pay to Lessor as and for liquidated and agreed current damages for Lessee’s default:

(a) The Basic Rent, Additional Rent, and other charges which would be payable under this Lease by Lessee if the Term of this Lease had not been terminated or the Personal Property repossessed less:

(b) The net proceeds, if any, of any reletting effected for the account of Lessee pursuant to the provisions of Section 9.05, after deducting all of Lessor’s necessary and incidental expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys’ fees and expenses, employees’ expenses, reasonable alteration costs and expenses of preparation for such reletting. Lessee shall pay such current damages on the days on which the Basic Rent would have been payable under
this Lease if the Term hereof had not been terminated or the Personal Property repossessed, and Lessor shall be entitled to recover the same from Lessee on each such day.

Section 9.07. Additional Remedies. In addition to such right to terminate this Lease and any other remedies provided for herein, whenever any Event of Default shall have happened and be continuing for a period beyond the time provided herein for curing the default, Lessor may (subject to the provisions of Section 9.04(d) herof) take whatever other action at law or in equity may appear necessary or desirable to collect the Basic Rent, Additional Rent, and any other monetary obligation of Lessee hereunder when due, or to enforce any obligation, covenant, or agreement of Lessee, Applicant or Sponsor under this Lease. If Lessor elects to terminate this Lease after Lessee's default, Lessor's remedies also include, but are not limited to, Lessor's right to convey the Personal Property to Lessee retaining a vendor's lien for all sums due and payable to Lessor by Lessee at the time of the conveyance. However, this Section 9.07 shall not apply with respect to Lessee if Lessee exercises its option to purchase pursuant to Article XI, in which case the rights of Lessor and Lessee shall be governed by the provisions of Article XI. Any such conveyance to Lessee by Lessor shall not relieve or otherwise affect any liability of Applicant or Sponsor to Lessor.

Section 9.08. Lessor's Rights Upon Default Due to Abandonment.

(a) Notwithstanding any other provision of this Lease to the contrary, in the event of an Event of Default under Section 9.01(d) of this Lease, after the expiration of any applicable notice and right to cure period contained in this Lease, in addition to the other rights and remedies provided for in this Lease, Lessee shall thereupon pay (or cause to be paid) to the appropriate tax collectors as an additional payment in lieu of taxes under Section 6.02 of this Lease, the Recapture Payment equal to the difference, if any, between (i) the total amount of the payments in lieu of taxes actually paid by or for the account of Lessee under Section 6.02 of this Lease for the Recapture Period following the date of abandonment as determined by Lessor (the “Abandonment Date”), and (ii) the total amount of taxes which would have been payable for the Recapture Period as if the Personal Property were then owned by a taxing entity. It is the intention of the parties, by the foregoing provisions, to provide that, after the Abandonment Date, Applicant shall not receive any greater PILOT incentives than it is entitled to as determined by Lessor in its sole discretion. The obligation for any Recapture Payment required to be paid by Lessee (any other provision of this Lease to the contrary notwithstanding) shall constitute a lien upon the Personal Property and enforceable by any and all remedies as are available to enforce the payment of personal property taxes. Lessee hereby consents and agrees that any action or proceeding to enforce any of its obligations or to collect any payments due from it may be brought in the courts of the State of Tennessee in Shelby County, Tennessee, or in the courts of the United States of America for the Western District of Tennessee. In the event of any conflict between this Section 9.08 and any other provision of this Lease, this Section 9.08 shall control.
ARTICLE X

CONDEMNATION AND CASUALTY

Section 10.01. Condemnation Proceeds. If, during the Term, all or any part of the Personal Property is taken by the exercise of the power of eminent domain or condemnation, Lessee shall receive the entire award for the taking. If the award is disbursed by the condemning authorities to Lessor, Lessor shall immediately pay the award to Lessee. Lessee shall be entitled to the proceeds of any condemnation award or portion thereof separately awarded for damages to or takings of Lessee's property or for damages on account of the taking or an interference with Lessee's right to possession or use of the Personal Property.

Section 10.02. Termination of Lease Upon Condemnation. If title to, or the use or control of, all or substantially all of the Personal Property shall be taken by the exercise of the power of eminent domain or condemnation, or if such title, use, or control of a substantial part of the Personal Property shall be so taken as results in rendering same unsatisfactory to Lessee for the purposes for which the same was used immediately prior to such taking or condemnation or similar use (to be determined in the sole judgment of Lessee), Lessee shall have the right to either acquire the Personal Property pursuant to the provisions of Section 11.01 or terminate this Lease. Until the purchase or termination has taken place, this Lease shall continue in full force and effect without abatement of rent.

Section 10.03. Continuation of Lease Upon Condemnation. If a lesser portion of the Personal Property be taken by exercise of the power of eminent domain or condemnation, this Lease shall nevertheless continue in full force and effect without abatement of rent. If such taking shall have caused damage to, or necessitated restoration or repair of, any of the Personal Property, Lessee, at its sole cost and expense, shall promptly and diligently restore and repair to such condition as it shall deem reasonable in view of the nature of the taking and the then intended use of the Personal Property by Lessee.

Section 10.04. Minor Casualty. If a minor part of the Personal Property shall be destroyed or damaged, Lessee shall promptly notify Lessor and at Lessee's expense, Lessee shall promptly and diligently restore, replace, and repair the same to such condition as it shall deem reasonable in view of the nature of the damage and the then intended use of the Personal Property by Lessee.

Section 10.05. Substantial or Complete Casualty. If, during the Term, the entire Personal Property, or substantial part thereof, shall be damaged or destroyed to such an extent that restoration thereof cannot be accomplished within ninety (90) working days from the date of damage (to be determined in the sole judgment of Lessee), Lessee shall have the right to either restore the Personal Property as provided in Section 10.04, acquire the Personal Property pursuant to the provisions of Section 11.01, or terminate this Lease; provided, however, that in the event Lessee acquires the Personal Property pursuant to the provisions of Section 11.01, Lessor shall then assign to Lessee (to the extent not previously paid to Lessor) and shall then pay
to Lessee (to the extent the same have previously been paid to Lessor but not applied to the repair or restoration of the Personal Property) all insurance proceeds arising out of such damage or destruction. The foregoing shall in no way, however, supersede or modify the rights of Lessee and any permitted sublessee (under a permitted sublease pursuant to the provisions of Section 3.06 hereof), as between themselves, as provided in any such permitted sublease.
ARTICLE XI

OPTION TO PURCHASE, INVESTMENT TAX CREDIT AND LIMITATIONS

Section 11.01. Option to Purchase. It is the intent of the parties hereto that the Lessee repurchase the Personal Property from the Lessor either (i) through the Purchase Option (as herein defined), (ii) upon expiration of the PILOT Term, or (iii) upon termination of this Lease for any other reason whatsoever. The repurchase shall be governed by the following provisions.

(a) Lessee shall have the option, at any time during the Term of this Lease and within ninety (90) days after the expiration or termination of this Lease, for any reason whatsoever, including without limitation a Lessee Event of Default, to purchase the Personal Property, subject to any then existing indebtedness created by or for the account of Lessee, as permitted or provided for in this Lease, for the sum of One Thousand and No/100 Dollars ($1,000.00) which shall be prepaid by Lessee at the time of execution of this Lease, but which prepayment shall not be deemed an exercise of Lessee’s option (the “Purchase Option”). Lessee shall notify Lessor in writing at least ten (10) days before the proposed date of purchase that Lessee desires to exercise the Purchase Option.

(b) Upon expiration of the PILOT Term or if the Lease is otherwise terminated for any reason and Lessee has not exercised the Purchase Option, Lessor shall provide written notice thereof within thirty (30) days after termination of the Lease. If Lessee fails to provide the necessary documentation to repurchase the Personal Property from Lessor within ninety (90) days of the notice, a fee equal to Two Thousand and No/100 Dollars ($2,000.00) per month, or any portion of a month, after the initial ninety (90) day period shall be charged until the Personal Property is reconveyed unless the delay is caused solely by Lessor. Such fee shall be assessed as Additional Rent until the reconveyance of the Personal Property to Lessee.

(c) In the event Lessee elects to purchase certain items, but less than all, of the Personal Property at separate times, Lessee shall pay the aforesaid purchase price of One Thousand and No/100 Dollars ($1,000.00) at the time the first item of Personal Property are conveyed to Lessee pursuant to the exercise of such option. Thereafter, upon each subsequent exercise of Lessee’s purchase option as to the remaining items of Personal Property which are then subject to this Lease, Lessee shall pay to Lessor, as additional purchase price for all items purchased upon each such subsequent exercise of the purchase option, the additional sum of Ten and No/100 Dollars ($10.00).

(d) The exercise of the Purchase Option by Lessee or termination of this Lease for any other reason whatsoever shall not relieve Lessee from the payment of any monetary obligations which shall be due and payable by Lessee (including, without limitation, any such amounts that shall have accrued) under this Lease as of the date of conveyance pursuant to such exercise, all of which shall be paid by Lessee. Lessee shall notify Lessor in writing at least ten (10) days before the proposed date of purchase that Lessee desires to exercise its option to purchase hereunder. Upon payment by Lessee of all expenses related thereto and any other sums
due and payable hereunder, Lessor shall convey the Personal Property to Lessee, subject to the liens of any Permitted Encumbrances, any bona fide encumbrance (as described in Section 3.05 hereof) and any other existing indebtedness incurred by or with the approval of Lessee and the rights of Lenders thereunder.

Section 11.02. Investment Tax Credit. Lessor and Lessee hereby elect and agree that Lessee shall be entitled to any investment tax or similar credit, or grants, with respect to the Personal Property now or hereafter authorized by the Internal Revenue Code, or other legislation, and Lessor agrees to take all reasonable action necessary to make such investment tax election and obtain the benefits for same for Lessee at Lessee's request and expense, and to obtain such grants.

Section 11.03. Conveyance of Title. In the event of any purchase of the Personal Property or any portion thereof by Lessee pursuant to any provision of this Lease, Lessor shall sell, transfer and convey title by a bill of sale thereto to Lessee subject to the Permitted Encumbrances and as thereafter created by or for the account of Lessee, as permitted or provided for in this Lease, but without making any warranties relating to title, fitness for a particular use, merchantability or any other express or implied warranties; and Lessor shall not otherwise be obligated to give or assign any better title to Lessee than existed on the first day of the Term of this Lease; provided, however, that Lessor acknowledges and agrees that Lessor has no authority or right to encumber the Personal Property or Lessor's interest therein by any encumbrances other than (i) the Permitted Encumbrances, (ii) those which Lessee has subsequently requested to be placed or caused to be placed against the Personal Property, (iii) those which Lessee has subsequently approved in writing to be placed against the Personal Property, or (iv) those for which Lessee is responsible under the terms and provisions of this Lease and which arise out of any default by Lessee in the performance of its obligations under this Lease. Any other conveyance or encumbrance (other than those described in clauses (i) through (iv) inclusive of the preceding sentence) by or for the account of Lessor shall in all respects be subject and subordinate to Lessee's leasehold interest as created under this Lease and to Lessee's right to acquire title to the Personal Property, free and clear of any such other conveyances or encumbrances, pursuant to Lessee's exercise of its option to purchase the Personal Property pursuant to this Article XI; and any such other conveyance or encumbrance, and any rights, liens or security interests created thereunder or arising therefrom shall be automatically terminated, released and extinguished by the transfer and conveyance of the Personal Property to Lessee by Lessor by a bill of sale as provided for in this Section 11.03, and thereafter all such conveyances, encumbrances, rights, liens or security interests shall be void and of no further effect. Subject to the foregoing, Lessee shall accept such title, subject, however, to (i) any liens, encumbrances, charges, exceptions, and restrictions not created or caused by Lessor or Lessor's Agents, and (ii) any laws, regulations, and ordinances.

Section 11.04. Survival of Rights. All provisions of this Article XI shall survive the expiration of the Term of this Lease (including any extensions thereof) or the termination of this Lease pursuant to any provision hereof (including, but not limited to, any termination pursuant to Article IX or Article X hereof).
ARTICLE XII
ENVIRONMENTAL MATTERS

Section 12.01 Lessee’s Environmental Covenants. Lessee shall not cause or allow any Hazardous Materials to be used, generated, stored, or disposed of in connection with its possession, use or operation of the Personal Property to the extent that any such use, generation, storage or disposal is in violation of any applicable federal, state, county or local statute, law, regulation, rule, ordinance, code, license or permit. As used herein, “Hazardous Materials” shall include, but not be limited to, hazardous, toxic and radioactive materials and those substances defined as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances” or other similar designations in any federal, state, or local law, regulation, or ordinance. Lessor shall have the right at all reasonable times upon reasonable notice to inspect the Personal Property and (if the presence of Hazardous Materials in violation of any applicable law, regulation or ordinance is reasonably suspected) to conduct tests and investigations to determine whether Lessee is in compliance with the foregoing provision.

Section 12.02 Lessee’s Remedial Covenants.

Provided that neither Lessor nor Lessor’s Agents have created, or are otherwise responsible for the environmental problems or hazardous condition after taking possession of the Personal Property, Lessee covenants at its sole cost and expense, to remove or take remedial action with regard to any Hazardous Materials which Lessee has caused or allowed to be used, generated, stored or disposed of in connection with its possession, use or operation of the Personal Property in violation of any applicable law, regulation or ordinance or of this Lease during the Term of this Lease or any extension thereof for which any removal or remedial action is required pursuant to law, ordinance, order, rule, regulation or governmental action.

(a) No such removal or remedial action shall be taken except after reasonable advance written notice to Lessor; provided, however, that no notice shall be required if immediate action is required in order to comply with the requirements of any laws, rules, ordinances or regulations of any governmental entity or if immediate action would diminish the extent of any environmental problem or hazardous condition.

(b) Lessee shall indemnify Lessor for any action taken by Lessee, in accordance with Section 12.03 hereof to Lessor’s satisfaction.

Lessee shall at all times retain any and all liabilities arising from the handling, treatment, storage, transportation or disposal of any Hazardous Materials by Lessee or by any of Lessee’s contractors.

Section 12.03 Indemnification of Lessor.
(a) Lessee shall indemnify and hold Lessor and its officers, directors, agents, counsel and employees harmless from and against any and all liabilities, losses, claims, penalties, damages (including, without limitation, consequential damages, interest, penalties, fines and monetary sanctions), and costs (collectively herein, "Loss"), and reasonable attorneys' and consultants' fees and expenses, court costs and all other out-of-pocket expenses (collectively herein, "Expense") incurred or suffered by Lessor by reason of, resulting from, or in connection with, or arising in any manner whatsoever out of the breach of any warranty or covenant, or the inaccuracy of any representation, of Lessee contained or referred to in this Article XIII. Lessor shall be entitled to conduct its own investigation in connection therewith and provide its own defense and charge Lessee with its reasonable expense incurred in connection therewith, including any Loss or Expense.

(b) All covenants, agreements and indemnities of Lessee contained in this Article XIII shall survive the Term of this Lease or any extensions hereof and the consummation of the transactions contemplated in this Lease, and shall not be affected by an investigation by or on behalf of Lessee or by any information Lessee may have or obtain with respect thereof.

ARTICLE XIII

JOINDER OF APPLICANT

Applicant joins in this Lease for the purpose of making its representations, warranties, covenants and agreements as expressly set forth in the Application, the Resolution and this Lease, and acknowledging that the terms and provisions of any permitted sublease as provided under Section 3.06 hereof, are subject and subordinate to the terms and provisions of this Lease.

ARTICLE XIV

DIVERSITY PLAN

Applicant has submitted and Lessor has approved Applicant's Diversity Plan. Applicant shall comply with the Diversity Plan during the Term. Applicant shall submit to Lessor for review certified quarterly compliance reports for the three previous months by January 15, April 15, July 15 and October 15 of each year of the Term, or as otherwise required by Lessor. Applicant shall also include Diversity Plan compliance information in its Annual Report. If Applicant fails to comply with the approved Diversity Plan, Applicant may be subject to an adjustment of the Term or tax benefits granted herein, as set forth in Section 9.04(e) hereof.

ARTICLE XV

MISCELLANEOUS

Section 15.01. NO WARRANTIES BY LESSOR. LESSEE ACKNOWLEDGES AND AGREES (1) THAT THE PERSONAL PROPERTY IS OF A SIZE, DESIGN, CAPACITY
AND MANUFACTURE SELECTED BY LESSEE; (2) THAT LESSEE IS SATISFIED THAT THE PERSONAL PROPERTY IS SUITABLE FOR LESSEE’S PURPOSES; (3) THAT LESSOR IS NOT A MANUFACTURER OR INSTALLER OF THE PERSONAL PROPERTY NOR A DEALER IN PROPERTY OF SUCH KIND; (4) THAT LESSOR HAS NOT MADE ANY INSPECTION OF THE PERSONAL PROPERTY PRIOR TO ITS DELIVERY TO LESSEE; AND (5) THAT LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER WITH RESPECT TO THE PERSONAL PROPERTY OR THE DESIGN, VALUE, MERCHANTABILITY, FITNESS FOR LESSEE’S INTENDED USE OR ANY OTHER USE, CONDITION, DURABILITY, QUALITY OF MATERIAL OR WORKMANSHIP OR CONFORMITY OF THE PERSONAL PROPERTY TO THE SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO, DURABILITY OR SUITABILITY OF THE PERSONAL PROPERTY IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO. LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO LESSEE OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE FOLLOWING: (i) ANY LIABILITY (INCLUDING WITHOUT LIMITATION, STRICT OR ABSOLUTE LIABILITY IN TORT OR IMPOSED BY STATUTE), LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE PERSONAL PROPERTY OR BY ANY OTHER CIRCUMSTANCES IN CONNECTION THERewith; (ii) THE USE, OPERATION OR PERFORMANCE OF THE PERSONAL PROPERTY OR ANY RISKS RELATING THERETO; (iii) ANY DELAY IN OBTAINING THE PERSONAL PROPERTY, OR ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS OR CONSEQUENTIAL OR INCIDENTAL DAMAGES; (iv) THE DELIVERY OF THE PERSONAL PROPERTY TO LESSEE, THE INSTALLATION OF THE PERSONAL PROPERTY UPON THE PREMISES, THE SERVICING, MAINTENANCE, REPAIR, IMPROVEMENT OR REPLACEMENT OF THE PERSONAL PROPERTY; OR (v) ANY OTHER DAMAGES WHATSOEVER AND HOWSOEVER CAUSED.

Section 15.02. Waivers. No waiver of any breach shall affect or alter this Lease or constitute a waiver of any other then existing or subsequent breach.

Section 15.03. Remedies. Subject to the express provisions and limitations of this Lease, each right, power and remedy of Lessor, Lessee or Applicant provided for in this Lease shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise of any one or more of the rights, powers, or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor, Lessee or Applicant of any or all such other rights, powers, or remedies.
Section 15.04. No Claims Against Lessor. Except as provided herein, nothing contained in this Lease shall constitute any consent or request by Lessor, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Personal Property or any part thereof, nor give Lessee or Applicant any right, power, or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any personal claim against Lessor.

Section 15.05. Quiet Enjoyment. Lessor does not make any representation or covenant that Lessee shall have quiet and peaceful possession of the Personal Property; however, Lessor agrees that it will not take any action to interfere with Lessee's peaceful and quiet enjoyment of the Personal Property and that in the event the peaceful and quiet enjoyment of the Personal Property shall be denied to Lessee or contested by anyone, Lessor shall upon request of Lessee join where necessary in any proceeding to protect and defend the quiet enjoyment of Lessee, provided that Lessee shall pay the entire cost of any such proceeding and reimburse, indemnify, and hold harmless Lessor from any cost or liability whatsoever.

Section 15.06. Governing Law; Entire Agreement. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee and, together with the action taken by Lessor granting the PILOT incentives with respect to the Project set forth in the Resolution and the Application (collectively, the “Related Documents”), expresses the entire agreement of the parties hereto. Neither party hereto shall be bound by any agreement or representation to the other party which is not expressly set forth in this Lease, the Related Documents or the Annual Reports. Any lawsuit filed to enforce the terms of this Lease shall be filed in the appropriate state or federal court located in the County.

Section 15.07. Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 15.08. Notice. All notices, certificates, demands, requests, consents, approvals, and other similar instruments under this Lease shall be in writing and shall be deemed to have been properly given and received if delivered in person or if sent by United States certified or registered mail, postage prepaid, to Lessor, Lessee or Applicant, or if sent by a nationally recognized commercial overnight delivery service (including, but not limited to, FedEx, Airborne, or United Parcel Service) which provides proof of delivery, or electronic mail, addressed to Lessor, Lessee or Applicant at such addresses as they respectively may have designated from time to time in writing, and if to any Lenders under Section 3.05, or any permitted sublessee under Section 3.06, addressed to their principal offices, or at such addresses as said Lenders or said permitted sublessees shall have designated from time to time in writing to Lessor and Lessee. At the commencement of this Lease:

(a) Lessor's address is 100 Peabody Place, Suite 1100, Memphis, Tennessee 38103, attn: President; with a copy to Board Counsel at 999 S. Shady Grove Road, Suite 500, Memphis, 35
Tennessee 38120.

(b) Lessee’s address is c/o Al Logan, Tax Manager, One Bowerman Drive, Beaverton, Oregon 97005-6453; with a copy to Corporate Counsel, One Bowerman Drive, Beaverton, Oregon 97005-6453 and Philip G. Kaminsky, 999 S. Shady Grove Road, Suite 300, Memphis, Tennessee 38120.

Delivery in person shall be effective on the date of delivery. Delivery by mail shall be effective three (3) days from the date of posting in the United States Mail. Delivery by recognized commercial overnight delivery service shall be effective on the next business day following the date on which the notice is delivered to the recognized commercial overnight delivery service for delivery by it.

Section 15.09. No Default Certificates. Lessor and Lessee agree at any time and from time to time, upon not less than twenty (20) days prior written request by the other party or by any Lender, or by any permitted sublessee, to execute, acknowledge, and deliver a statement in writing certifying that this Lease is in full force and effect and that they know of no default (or if there is a default, the precise grounds therefor) and the date to which the Basic Rent and other charges have been paid in advance, if any.

Section 15.10. Headings. Headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof.

Section 15.11. Construction of Certain Words. Wherever the sense of this document requires it, the singular shall be construed to include the plural and the plural the singular, and wherever the masculine, feminine, or neuter gender is used, each shall be construed to include either or both of the others if the sense of this document so requires.

Section 15.12. Successors. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 15.13. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 15.14. Amendments. Except as set forth in Section 15.18 hereof, this Lease may be modified or amended only by an instrument in writing signed by the parties (or their respective successors or assigns).

Section 15.15. Performance by Lessee. Lessee may satisfy any or all of its undertakings and obligations provided for in this Lease by causing its permitted sublessee to perform the same.
Section 15.16. Lessor's Limitation of Liability - No Personal Liability. Anything in this Lease to the contrary notwithstanding, Lessee and Applicant agree that they shall look solely to the Personal Property for the collection of any judgment (or other judicial process) requiring the payment of money by Lessor in the event of any default or breach by Lessor with respect to any of the terms, covenants and conditions of this Lease to be observed and performed by Lessor and no other property or assets of Lessor shall be subject to levy, execution or other procedures for the satisfaction of Lessee’s or Applicant’s remedies hereunder.

Section 15.17. National Corporate Headquarters Termination. If Applicant has received benefits or concessions in this Lease based on the fact that the Project was to be utilized as Applicant’s primary North American corporate headquarters and Applicant fails to continually utilize the Project as its national headquarters for more than thirty (30) days, Lessee and Applicant shall give Lessor at least thirty (30) days written notice of Applicant’s intention to cease the utilization of the Premises as its national headquarters.

Section 15.18. Power of Attorney. Upon the occurrence of an uncured Event of Default, Lessee and Applicant hereby irrevocably appoint Lessor as their attorney in fact, which agency is coupled with an interest to execute any documents required to terminate this Lease or amend this Lease in accordance with the terms of this Lease by reducing the Term, any such documents may, at Lessor’s option, be recorded in the public records as Lessor shall elect.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

[Signature Page Follows]
PILOT LEASE - LESSOR SIGNATURE PAGE

LESSOR:

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

By:  
Reid Dulberger  
President

ATTEST:

By:  
Al Bright, Jr.  
Chairman

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared REID DULBERGER, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, a public not-for-profit corporation of the State of Tennessee, the within named bargainor, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the bargainor by himself as such officer.

WITNESS my hand and seal at office on this, the 27th day of December, 2013.

My Commission Expires:

NOTARY PUBLIC

PATRICIA L. EVERT
STATE OF TENNESSEE
NOTARY PUBLIC
SHELBY COUNTY
MY COMM. EXP. 10-26-2015

38
STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared AL BRIGHT, JR., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chairman of the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, a public not-for-profit corporation of the State of Tennessee, the within named bargainor, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the bargainor by himself as such officer.

WITNESS my hand and seal at office on this, the 27th day of December, 2013.

[Signature]

NOTARY PUBLIC

My Commission Expires:

[Stamp]
PILOT LEASE - LESSEE SIGNATURE PAGE

LESSEE:

[Signature]

STATE OF OREGON
COUNTY OF Washington

Personally appeared before me, a Notary Public, in and for said State and County, duly commissioned and qualified, John F. Loburn III, with whom I am personally acquainted (or proved on the basis of satisfactory evidence to be the person), and who, upon oath, acknowledged himself to be the Secretary of NIKE TN, Inc., the within named bargainor, and that she or he, as the case may be, as such trustee acting on behalf of the bargainor, being authorized to do so, executed the foregoing instrument for the purposes therein contained by subscribing her or his own name.

WITNESS my hand and seal at office on this, the 5th day of December, 2013.

[Signature]
NOTARY PUBLIC

My Commission Expires: 03/01/2014
PILOT LEASE - APPLICANT SIGNATURE PAGE

APPLICANT:

[Signature]

STATE OF OREGON
COUNTY OF Washington

Personally appeared before me, a Notary Public, in and for said State and County, duly commissioned and qualified, John F. Loburn III, with whom I am personally acquainted (or proved on the basis of satisfactory evidence to be the person), and who, upon oath, acknowledged himself to be the Secretary of Nike TN, Inc., the within named bargainor, and that she or he, as the case may be, as such trustee acting on behalf of the bargainor, being authorized to do so, executed the foregoing instrument for the purposes therein contained by subscribing her or his own name.

WITNESS my hand and seal at office on this, the 5th day of December, 2013.

[Signature]
NOTARY PUBLIC

My Commission Expires:
03/01/2014

OFFICIAL SEAL
SUSAN A MARINEAU
NOTARY PUBLIC - OREGON
COMMISSION NO. 447032
MY COMMISSION EXPIRES MARCH 01, 2014
| Model | "Note" | TCO | AASDIC | CC | M2A/BU
|-------|--------|-----|--------|----|-----
| 2019-91 |   d   |     |        |    |     
| 2018-91 |   d   |     |        |    |     
| 2017-91 |   d   |     |        |    |     
| 2016-91 |   d   |     |        |    |     
| 2015-91 |   d   |     |        |    |     
| 2014-91 |   d   |     |        |    |     
| 2013-91 |   d   |     |        |    |     
| 2012-91 |   d   |     |        |    |     
| 2011-91 |   d   |     |        |    |     
| 2010-91 |   d   |     |        |    |     
| 2009-91 |   d   |     |        |    |     
| 2008-91 |   d   |     |        |    |     
| 2007-91 |   d   |     |        |    |     
| 2006-91 |   d   |     |        |    |     
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| 2001-91 |   d   |     |        |    |     
| 2000-91 |   d   |     |        |    |     

**TCO**

**AASDIC**

**CC**

**M2A/BU**
Exhibit B
LEGAL DESCRIPTION

BEING A DESCRIPTION OF PART OF THE NIKE TN, INC. PROPERTY AS RECORDED IN INSTRUMENT _______ AT THE SHELBY COUNTY REGISTER’S OFFICE, LOCATED IN MEMPHIS, SHELBY COUNTY, TENNESSEE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF NEW FRAYSER BOULEVARD (90.00 FOOT PUBLIC RIGHT-OF-WAY LINE) WITH THE EAST LINE OF THE ILLINOIS CENTRAL RAILROAD RIGHT-OF-WAY (150.00 FOOT WIDE RIGHT-OF-WAY); THENCE N17°07′41″E ALONG THE EAST LINE OF THE SAID RAILROAD RIGHT-OF-WAY A DISTANCE OF 2127.11 FEET TO THE POINT OF BEGINNING; THENCE N17°07′41″E AND CONTINUING ALONG THE EAST LINE OF THE SAID RAILROAD RIGHT-OF-WAY A DISTANCE OF 368.02 FEET A POINT OF CURVATURE; THENCE CONTINUING ALONG THE EAST LINE OF THE SAID RAILROAD RIGHT-OF-WAY ALONG A 2939.80 FOOT RADIUS CURVE TO THE LEFT AN ARC DISTANCE OF 810.72 FEET (CHORD N09°13′40″E - 808.15 FEET) TO A POINT; THENCE S77°20′54″E A DISTANCE OF 1104.20 FEET TO A POINT; THENCE S08°04′28″W A DISTANCE OF 1083.30 FEET TO A POINT; THENCE N81°55′32″W A DISTANCE OF 1174.86 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,248,830 SQUARE FEET OR 28.669 ACRES.
Exhibit C
PERMITTED ENCUMBRANCES

All matters of record
November 19, 2012

Reid Dulberger, CEO and President
EDGE
100 Peabody Place, Suite 1100
Memphis, TN 38103

Dear Mr. Dulberger,

We are very pleased that Nike, Inc. has decided to expand operations here in the Memphis and Shelby County area. The project was reviewed under the Retention Payment-In-Lieu-of-Tax (PILOT) guidelines of the Economic Development Growth Engine (EDGE) Board using the following project assumptions:

- **Job Creation:** 250 new jobs and 1662 retained jobs
- **Average Wage:** $35,000 annually (excludes benefit value)
- **Investment:**
  - Real Property: $167,000,000
  - Personal Property: $134,000,000
  - **Total Capital Investment:** $301,000,000
- **Locations:**
  - 3100 New Frayser Blvd., City of Memphis, 38128
  - 5151 Shelby Drive, City of Memphis, 38128

Based on the information submitted and shown above, we recommend a 15 (fifteen) year PILOT on personal and real property involved in this project. This PILOT will have a 4 (four) year or 1 (one) year after certificate of occupancy, whichever comes first, ramp up period. Real and personal property will be assessed at the 10% (ten percent) rate for the City of Memphis and 25% (twenty five percent) rate for Shelby County. We are pleased about Nike’s decision to remain and expand in Memphis and Shelby County and support its continued prosperity. Should you have any questions, please don’t hesitate to contact me at 901-341-2100.

Sincerely,

[Signature]
A C Wharton, Jr.
Mayor, City of Memphis

[Signature]
Mark H. Luttrell, Jr.
Mayor, Shelby County
Exhibit E
POLICIES AND PROCEDURES
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

Approved & Effective: February 20, 2013
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I. **GENERAL PURPOSE**

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 ("IDB") and Depot Redevelopment Corporation of Memphis and Shelby County ("Depot"). A primary tool of EDGE to effectuate its mission is the ability to grant a payment in lieu of (property) tax incentive ("PILOT").

The formation of EDGE was authorized by resolutions of the City Council of Memphis and the Board of Commissioners of Shelby County on February 1, 2011; and January 24, 2011, respectively. In authorizing its formation pursuant to Tennessee Code Annotated section 7-53-201, the legislative bodies found that EDGE was to:

- unite economic development programs into a new entity to effectuate this community possessing the most successful means possible in providing a streamlined economic development process with efficiencies and expertise to recruit, retain and expand the employment base and economic wealth base of this community; and
- increase the efficiency, effectiveness and impact of existing programs by leading and coordinating the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, the Depot Redevelopment Corporation of Memphis and Shelby County, Foreign Trade Zone 77, the Memphis and Shelby County Port Commission, the Office of Economic Development of Memphis and Shelby County, the successors of any aforementioned entity, and any and all such other offices, corporations, and commissions relating to economic development and growth as designated from time to time by the City of Memphis and Shelby County, Tennessee, to the extent allowed by the laws of the United States of America and the State of Tennessee.

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.

To this end, EDGE and its applicable affiliated entities will conduct their business within the guidelines set forth herein when considering applications for PILOTs. Nothing herein shall imply or suggest that EDGE, the City of Memphis, or the County of Shelby are under any obligation to provide a PILOT 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, and/or the Memphis City Council and/or the Shelby County Board of Commissioners, and, in certain
cases, the discretion of the Tennessee Commissioner of Economic and Community Development and of the Tennessee Comptroller of the Treasury.

EDGE has the right, to amend these guidelines 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 PILOT and the person or entity which will use the facility(ies) comprising the Project to meet the jobs, wages, capital investment and other criteria set forth in the PILOT Resolution.

"Basic PILOT" means a PILOT transaction based on job creation, rather than job retention, as set forth in Section V.

"Benefit to Cost Ratio" means an analysis completed by EDGE’s staff ("Staff") or consultants working on behalf of EDGE that is used by EDGE to help determine the appropriate PILOT rate and term for a Project (defined below). The analysis systematically compares: (1) the estimated local tax benefits accruing to the City of Memphis and Shelby County (i.e., benefit); with (2) the estimated amount of City and County property taxes foregone over the term of the Lease Agreement as a result of the PILOT to be awarded (i.e., cost).

"Brownfield" means any real property that has been vacant or abandoned for at least five (5) years, has a prior history of industrial use, and has potential environmental contamination as indicated by a Phase I Environmental Assessment. Additionally, only those properties in excess of five (5) acres or structures with more than 20,000 square feet of gross floor area will be considered an eligible Brownfield.

"Capital Investment" means the investment in land, buildings, site preparation, equipment and any other property for the Project which would otherwise be taxable under the Tennessee property tax law.

"Charter" means the Charter or Certificate of Incorporation of EDGE, as amended from time to time.

"Community Reinvestment Credit (CRC)" is an incentive provided for within EDGE’s PILOT program to encourage the reuse of existing structures throughout Shelby County by effectively reducing the real property tax burden (on improvements or buildings) to the PILOT rate on that portion − as determined on a square footage basis − of the building occupied for the Project. The CRC incentive is calculated based on the then current appraised value of the existing real property, to be utilized for the Project, as set by the Shelby County Assessor of Property, and is thus utilized in the application process for both the PILOT Evaluation Matrix and the Benefit to Cost Ratio calculation that EDGE uses to help it determine the appropriate level at which to set the PILOT rate and term.
The Community Reinvestment Credit is intended to apply to property not owned, leased or otherwise occupied by the Applicant at the time the PILOT is awarded, excepting that in exceptional circumstances, as determined by the EDGE Board at its sole discretion, Retention PILOTS (defined below) may provide CRC benefits to space owned, leased or occupied by the Applicant at the time of its application for a PILOT and which the Applicant may occupy after approval of its PILOT, and in exceptional circumstances as determined by the EDGE Board at its sole discretion, Retention PILOTS may provide CRC benefits to tangible personal property.

“Contract Employee” means a person employed by a party other than the Applicant whose labor is contracted for by Applicant, and who is considered a necessary member of the workforce responsible for duties and assignments required to be performed in order for Applicant to meet the production levels of the Project. All contract employees are subject to the PILOT criteria for determining Net New Jobs, including, but not limited to, wages and medical benefits.

“Expansion” means, in the context of an ongoing PILOT Project (defined below), the acquisition of land, buildings, structures, machinery, equipment and/or other tangible personal property which would thus expand or increase the scope of an ongoing PILOT Project and results in the addition of net new jobs. An Expansion for which a PILOT is being sought will be evaluated independently from the initial evaluation of the Project, and will require a new PILOT application, unless the Expansion is allowed under the existing PILOT Lease Agreement(s), in which case the addition to the Project will be allowed and entitled to PILOT benefits without a new PILOT application. Accordingly, such “additions” are not to be included in the definition of “Expansion” as set forth herein.

“Identified Labor Source (“ILS”)” means individuals certified by the Memphis Career Center, The Workforce Investment Network, and other entities as designated by the EDGE Board of Directors whose purpose is to assist residents of Memphis and Shelby County to find employment.

“Full-Time Equivalent Jobs” are full-time jobs which provide full-time employment of at least 1,600 hours per year, and permanent part-time jobs, which, when combined, total at least 1,600 hours of employment. For example, if an employer had one worker working 1,600 hours per year and two workers working 800 hours per year each, that employer would be providing employment for two full-time equivalent jobs.

“Lease Agreement” means the formal contract between the Applicant and/or Sponsor and EDGE pertaining to the lease of real and/or tangible personal property which is the subject of a Project, and along with a PILOT Agreement contains all of the terms and conditions with which all parties of said contract must be in compliance.

“Minority/Small Business” means any business whose certification as a minority and/or small business is accepted by the City of Memphis or Shelby County.

“Net New Jobs” means the number of new Full-Time Equivalent Jobs in Shelby County created by the Project, and based at the site(s) that is/are the subject of the Lease Agreement (“Project sites(s)”). Net New Jobs in Shelby County shall not include any jobs being provided by
Applicant at another site in Shelby County at the time the PILOT application is submitted to EDGE, and moved by Applicant from said other site(s) in Shelby County to the Project sites(s). Net New Jobs shall include Contract Employees.

“PILOT Agreement” means the formal contract between EDGE and the PILOT Recipient which, along with a Lease Agreement, contains all the terms and conditions with which all parties must be in compliance. The use of a PILOT Agreement may be waived by the EDGE Board in appropriate circumstances.

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

“PILOT Program” means the PILOT program defined by the Policies and Procedures (defined below).

“PILOT Rate” means the percentage by which the payment in lieu of taxes reduces the property taxes that would otherwise have been paid on a property.

“PILOT Recipient” means the person or entity receiving a PILOT from EDGE or a predecessor or related entity.

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

“Policies and Procedures” means these policies and procedures, being the 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 and tangible personal property (e.g., the buildings, structures, machinery, equipment, and land), jobs, wages, capital investment, and other rights and obligations of the PILOT Recipient and EDGE, as approved by the EDGE Board and memorialized in the Resolution, PILOT Agreement and Lease Agreement.

“Project Annual Average Wage” See definition below for “Shelby County Annual Average Wage.”

“Project Sites” See definition above for “Net New Jobs.”

“Qualified Tourism Project” means any Project that (a) qualifies as a “qualified public use facility” as defined in the Convention Center and Tourism Development Financing Act of 1998, Tennessee Code Annotated section 7-88-103, as it may be amended from time to time, or (b) any other tourism Project approved by a majority of the EDGE Board of Directors.

“Ramp-Up Period” means the time period within which the PILOT Recipient is provided in order
to meet its jobs, wages, capital investment and diversity plan goals, and comply with its special consideration commitments in applicable cases. The Ramp-Up Period shall be two (2) years unless a longer period of time is approved by EDGE.

"Related Party" means the parent, owner or affiliate, including brother/sister entities, of the Applicant or Sponsor.

"Relocation" means the movement of an Applicant’s operation from one location within Shelby County to another location in Shelby County, such movement resulting in the cessation of operations at the Applicant’s existing site and the establishment of said operations at its new site.

"Resolution" means that resolution approved and executed by EDGE setting forth the benefits to be provided to Applicant and/or Sponsor for the Project and the obligations of Applicant and/or Sponsor to EDGE in consideration thereof.

"Retention PILOT" means a PILOT transaction based on job retention, rather than job creation, as set forth in Section VI.

"Shelby County Annual Average Wage" is the annual average wage as calculated and reported by the Tennessee Department of Labor and Workforce Development ("Department") in the Quarterly Census of Employment and Wages. The annual average wage as reported by the Department includes regular wages, overtime pay, paid holidays, and paid vacation. EDGE’s evaluation of a PILOT application will compare the Project’s annual average wage ("Project Annual Average Wage") to the Shelby County Annual Average Wage. Accordingly, the Project Annual Average Wage is to include regular wages, overtime pay, paid holidays, and paid vacation.

"Sponsor" means any person or entity with legal or economic responsibility for the Project. For example, a Sponsor may be the Applicant or the proposed Project lessee, as set forth in the Lease Agreement. In a three-party PILOT transaction, the Sponsor is usually the fee owner of the real property which will be the site of the Project and/or the owner of the personal property which Applicant will be acquiring for the Project through a lease transaction. In such a situation, the Sponsor will convey the property to EDGE, EDGE will lease back the property to the Sponsor pursuant to a Lease Agreement, and the Sponsor will then sub-lease the property to the Applicant. The Applicant will also be a party to the Lease Agreement. The basic operating lease term between the lessee (Sponsor) and the sub-lessee (Applicant) 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.

III. GENERAL PILOT OBJECTIVES AND PROVISIONS

1. In accordance with the requirements of State law, 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 primarily on the following performance standards:

   A. Number of jobs created and/or retained;
B. Wages paid and medical benefits provided;
C. Capital Investment;
D. Diversity Plan goals; and
E. Benefit to Cost Ratio.

2. The following types of projects, facilities and buildings may be considered for a PILOT:

A. Industrial Projects constructed to manufacture, assemble, process, fabricate, and distribute agricultural, mining, biomedical, electronics, food, chemical, alternative fuels, automobiles, or other products;

B. Pollution Control Projects promoting the health, welfare, and safety of the citizens of Memphis and Shelby County even without regard to employment factors;

C. Distribution Facilities constructed to receive and forward goods to various locations;

D. Office Buildings and Service Facilities that the Project will occupy for at least the term of the PILOT;

E. Major Tourism Projects that meet the threshold set for participating Projects under the Convention Center and Tourism, Development Financing Act of 1998 (Tennessee Code Annotated section 7-88-101, et seq.); and

F. Other Non-Retail Projects allowed by the Tennessee Code Annotated, including but not limited to Tennessee Code Annotated section 7-53-101, but not defined above, which may be considered on a case-by-case basis.

3. The following types of projects shall not be considered for a PILOT:

A. Projects that are already underway or have begun construction. The utilization and occupancy of existing real and/or tangible personal property by a new Project, however, is allowed, as set forth in Section VII;

B. Projects for Housing, Retail, Entertainment and Recreation Facilities, except for a project qualifying as a Qualified Tourism Project; and

C. Speculative projects. No PILOT application shall be approved if it would constitute an artifice or device to circumvent EDGES’s requirement that “speculative” rental projects not be approved.

4. The Policies and Procedures shall not be construed to deny a PILOT for an Applicant on account of the fact that the actual or equitable ownership of the property to be utilized for the Project resides in an entity or entities other than the Applicant or user.
Such cases shall be considered upon their individual merits, but in no event shall property owned by a party other than the Applicant or user of the facility be considered unless all of the facility or a predefined percentage of the facility will be used for the Project which is the subject of the PILOT.

5. EDGE shall, upon approval of a Project, take title to the real and/or tangible personal property associated with the Project and intended to receive a PILOT benefit as approved by EDGE, and EDGE shall then lease such property to the Applicant or Sponsor for the term of the PILOT, with the PILOT payments being established as set forth in the PILOT Agreement and Lease Agreement.

6. Under PILOT Agreements, 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 or in the Charter, for real property, such payments are to be based on the property taxes being generated from the unimproved property and a fraction of the property taxes which would otherwise be collected and attributable to the real property improvements at the time EDGE takes title to the Property. 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 of Directors, but no such change shall be applied retroactively to any previously approved PILOT. At the present time, the minimum such fraction allowed is ten (10%) for the City of Memphis, if located in whole or in part within the City of Memphis, and twenty five percent (25%) for Shelby County.

Generally and subject to exceptions set forth herein or in the Charter, for tangible personal property, such payments are to be based on a fraction of the property taxes that would otherwise be collected and attributable to the tangible personal property improvements at the time EDGE takes title to the Property. The minimum allowable fraction is subject to change from time to time without notice by action of the Memphis City Council, Shelby County Commission, and/or the EDGE Board of Directors, but no such change shall be applied retroactively to any previously approved PILOT. At the present time, the minimum allowed is ten percent (10%) for the City of Memphis, if located in whole or in part within the City of Memphis, and twenty five percent (25%) for Shelby County.

7. Each Applicant, 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.

8. In order to support the community's economic development goals, which include enhancing locally owned, small, and minority businesses, Applicants receiving a PILOT must participate in EDGE’s Diversity Program. The guidelines for EDGE’s Diversity Program are set forth in Section XVI below.
9. 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 and also include any additional term potentially made available as part of Special Incentives provided for below at Section IX.

However, a new, totally separate Project may be located on property previously the subject of a PILOT Agreement and/or Lease Agreement, and, if eligible for a PILOT, could result in the property being in the PILOT program for more than fifteen (15) or twenty (20) years without any of the aforementioned special approvals. Such a new Project may be approved by EDGE for the same Applicant which is/has been enjoying the PILOT benefits for an earlier/different Project, covering the same property which had been covered under a PILOT lease agreement then currently in existence or previously in existence at any time preceding approval of the new PILOT Resolution, established in either case in connection with a previous Project.

10. The term and rate 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 Policies and Procedures, including the PILOT Evaluation Matrix, and the Benefit to Cost Ratio, which will help inform EDGE’s decision.

11. 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).

12. Transportation property, such as motor vehicles, watercraft, railcars, and aircraft, shall not be eligible for inclusion in a Project and may not be counted as part of an Applicant’s capital investment for the determination of eligibility for a PILOT or for the purposes of determining the rate and term of the PILOT.

At the discretion of EDGE, infrastructure and fixed objects supporting any and all transportation property may be declared to be eligible for a PILOT and are eligible to be included as part of an Applicant’s capital investment for a Project, utilized for the determination of PILOT eligibility, and for purposes of determining the rate and term of the PILOT.

13. Applicant must demonstrate compliance with and payment of all municipal, county, state, and federal 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.
14. Applicant must provide medical benefits for its Project workers and pay at least 50% of the cost of those benefits to be eligible for a PILOT. This requirement may be waived for a Qualified Tourism Project.

15. The Benefit to Cost Ratio for the Project should indicate that the public benefit resulting from new local tax revenues generated for the City of Memphis and Shelby County by the Project equals or exceeds the public cost as measured by the City and County property tax revenues forgone as a result of the PILOT. Accordingly, the Benefit to Cost Ratio thus determined must equal or exceed 1:1, unless a two-thirds (2/3’s) majority of the EDGE Board members vote to waive this requirement for a Project. (Similarly, such a majority of the EDGE Board members may approve a ratio of less than 2:1 for a Retention PILOT Project. See below at Section VI.)

IV. CONFLICTS OF INTEREST

Each EDGE Board member and each member of the Staff 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 member or Staff member having any material interest in a Project or having a material interest in or family relationship with an Applicant or 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 or any 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. BASIC PILOT SCORING CRITERIA

EDGE has established the criteria listed below for the evaluation of applications seeking a Basic 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 without notice. 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 Basic PILOT. Nothing contained herein, however, shall obligate EDGE, the City of Memphis, or the County of Shelby to approve a PILOT application.

The following criteria address the responsibility of EDGE to demonstrate that the PILOT being
awarded is in the public interest and supports job creation. If a Project meets these criteria to be considered for a PILOT incentive, the term and rate of any PILOT that may be awarded will be determined by EDGE based upon the PILOT Evaluation Matrix, the Benefit to Cost Ratio, and other relevant considerations.

1. Jobs. Subject to exceptions set forth herein, a Project must create at least fifteen (15) Net New Jobs to be considered for a PILOT. Points will be awarded according to the PILOT Evaluation Matrix based upon the number of Net New full-time-equivalent jobs created directly by the Project, including contract employees. Project workers must be paid at least $10 per hour (actual wage rate, not average wage rate) to be considered in the determination of Net New Jobs for a PILOT. This criterion may be waived for a Qualified Tourism Project.

2. Wages. Projects that pay Annual Average Wages (including paid overtime, vacation and holidays) that equal or exceed 75% of the current Shelby County Annual Average Wage will be awarded points according to the PILOT Evaluation Matrix.

3. Capital Investment. Capital Investment of at least $1,000,000 is required in order to be eligible for a PILOT. The Applicant will be awarded points based upon the amount of its Capital Investment, according to the PILOT Evaluation Matrix. Additional Capital Investment in an amount not to exceed 10% of the amount initially approved by EDGE may be added to the Project for the term of the PILOT and enjoy the PILOT benefits without the submission of a new PILOT application. Capital Investment cannot be transferred or reallocated between real and personal property categories once EDGE has approved a resolution authorizing the PILOT without EDGE’s approval.

Subsequent investment capital reassignment within a property category by the Applicant will require EDGE approval. Monthly or annual rental payments during the PILOT lease term will not be construed as part of the leasehold property improvement or as increasing the value of the Applicant’s Capital Investment.

4. Need. As part of its PILOT application, Applicant must demonstrate that the PILOT is an important component of an overall plan to achieve the subject economic development/project.

5. Location. Projects located within the City of Memphis and/or Target Areas will be awarded points according to the PILOT Evaluation Matrix. Target Areas currently include:

   - Former Renewal Community census tracts as previously defined by the U.S. Department of Housing and Urban Development;
   - New Markets Tax Credit eligible areas as defined by the U.S. Department of the Treasury;
   - Other City Target Areas, as designated by the City of Memphis, Shelby County, and/or EDGE;
• Frank Pidgeon Industrial Area;
• State and Federal designated Brownfields, as defined in Section II; and
• Urban Economic Revitalization Areas.

6. **Special Consideration Points.** EDGE shall have discretion to consider pertinent information that demonstrates a significant beneficial impact upon the economic and physical development plans of Memphis and Shelby County. Accordingly, EDGE may, but is not required to, grant additional points to Projects that meet any of the criteria listed below. The maximum number of points which may be awarded for meeting each of these categories of criteria is noted in the PILOT Evaluation Matrix. In no event shall the total number of points for special consideration factors exceed 25% of the Matrix score calculated prior to the addition of special consideration points. If any special consideration points are awarded, resulting in an extended PILOT term, the Project must still meet the criterion of a Benefit to Cost Ratio that equals or exceeds 1:1, as noted above.

   A. **Targeted Industries**
      i. Biomedical (research and manufacturing);
      ii. Electronics (assembly, repair, and manufacturing);
      iii. Manufacturing (food processing, chemical, alternative fuels, automobile, and other manufacturing);
      iv. Information Technology;
      v. Logistics;
      vi. Music;
      vii. Film; and
      viii. Tourism.

   B. **Regional, District, National, or International Corporate Headquarters.**

   C. **U. S. Fortune 500/Global 1,000 companies, or Nationally Recognized Industry leaders.**

   D. **Major Employers (employers providing 500 or more jobs based in Shelby County).**

   E. **Minority/Women-owned Business.**

   F. **Benefit to Cost Ratio for the Project which exceeds 3:1.**

**VI. RETENTION PILOT SPECIAL ELIGIBILITY AND SCORING CRITERIA**

The Retention PILOT was established to assist firms facing significant threats to the continued operation of their existing Shelby County facilities and the associated loss of jobs. The Retention PILOT is meant to be part of an overall company response to that identifiable threat, specifically by providing assistance to help the Applicant make the critical capital investment required to secure its local operations. As such, Retention PILOTs do not require the creation of Net New Jobs, unlike the Basic PILOT, as outlined above. Retained jobs and the associated annual average wages paid will be used in the Benefit to Cost Ratio calculation to evaluate each proposed Retention PILOT.
In considering an application from an Applicant for a Retention PILOT pursuant to this Section, the following factors shall apply:

1. Applicant must demonstrate that its local operations are at substantial risk of suffering a significant decline in local employment without the Retention PILOT and the associated capital expenditure.

2. Applicant must have been operating and directly employing workers in Shelby County for ten (10) consecutive years prior to applying for a Retention PILOT.

3. Applicant must be financially sound.

4. Applicant’s history and performance regarding any past PILOT agreements will be reviewed and must be found to be acceptable by EDGE.

5. Applicant must be improving its operations and/or upgrading its technology or processes to better position it for longevity.

6. As part of the sought PILOT Project, Applicant must demonstrate a long-term commitment to Shelby County by buying or building a facility to house its operations, expanding an existing facility, or by signing or extending a lease for at least as long as the term of the PILOT, including all options to renew and/or extend.

7. Applicant must make new capital investments totaling a minimum of $10,000,000 in real and/or tangible personal property for the proposed Project in Shelby County. Applicants cannot use the value of real estate or tangible personal property currently owned or leased to meet any part of this requirement.

8. Subject to exceptions specifically set forth herein, Applicant must retain a minimum of 100 jobs in Shelby County with an annual average wage that equals or exceeds 100% of the Shelby County Annual Average Wage and must provide medical benefits for these workers and pay at least 50% of the cost of said medical benefits.

9. The Benefit to Cost ratio for Memphis and/or Shelby County from the jobs retained and new capital investment must exceed their opportunity cost resulting from the tax incentive provided by the Retention PILOT, the property taxes foregone, by a ratio of at least 2:1 as projected over the term of the PILOT; however:

   A. When the Shelby County unemployment rate exceeds 8.5%, a lower Benefit to Cost Ratio may be acceptable on a case-by-case basis, but not lower than 1:1;

   B. When the Shelby County unemployment rate is lower than 5%, a higher Benefit to Cost Ratio may be required; and

   C. If the Benefit to Cost Ratio significantly exceeds 3:1, EDGE may lower the minimum requirements for job retention, Annual Average Wage, and/or Capital Investment, so long as the resulting Benefit to Cost Ratio still equals or exceeds
10. A relevant Ramp-Up Period will be established for each Retention PILOT Project.

11. The PILOT Evaluation Matrix shall not be used to determine eligibility for a Retention PILOT or the PILOT term or rate. Instead, EDGE staff will utilize the analytical tools at their disposal to evaluate each application and propose the minimum PILOT incentives necessary to achieve the retention of existing Shelby County jobs, subject to the threshold requirements set forth in this Section.

12. Each Retention PILOT Agreement and/or Lease Agreement will contain provisions designed to adjust PILOT benefits awarded proportionately based on the PILOT Recipient’s ability to meet the job retention, Annual Average Wage, and Capital Investment targets approved for the Project and set forth in the PILOT Agreement and/or Lease Agreement. Failure of a Retention PILOT Recipient to meet the minimum Capital Investment ($10 Million) or job retention (100 jobs retained) criteria set forth in this Section at the conclusion of the Ramp-Up Period shall result in termination of the PILOT. In no case shall a Project’s Retention PILOT benefits at any time exceed those approved by EDGE and set forth in the PILOT Agreement and/or Lease Agreement.

VII. COMMUNITY REINVESTMENT CREDIT INCENTIVE: SPECIAL ELIGIBILITY AND SCORING CRITERIA

The Community Reinvestment Credit ("CRC") incentive was developed to encourage the redevelopment of existing structures in Shelby County. Generally, the CRC incentive may apply to (1) locally assessed real properties, or portions of locally assessed real property (excluding any unutilized floor space owned or leased by the Applicant or Related Party) within the corporate limits of Shelby County; and (2) real properties located in Shelby County but centrally assessed as provided at Tennessee Code Annotated section 67-5-1301, et seq., as amended from time to time. In exceptional circumstances, as determined by EDGE at its sole discretion, Retention PILOTS may provide CRC incentives to space owned, lease, or occupied by the Applicant at the time of its application for a PILOT and which the Applicant will occupy after approval of its PILOT, and in exceptional circumstances as determined by the EDGE Board at its sole discretion, Retention PILOTS may provide CRC benefits to tangible personal property.

Both Basic PILOT Projects and Retention PILOT Projects may be eligible for the CRC benefits and may seek such benefits if an existing property were to be utilized for the Project.

Except as otherwise set forth herein, the requirements, limitations, other criteria set forth above in Section III and, as applicable, the requirements for Basic PILOTs and Retention PILOTs, set forth in above Sections V and VI, respectively are applicable to PILOTs with CRC incentives. Further, the following criteria shall apply to any Applicant seeking CRC benefits:

1. Jobs. Subject to exceptions specifically set forth herein, the Project must result in the creation of at least fifteen (15) Net New Jobs, except that in the case of a Retention PILOT, instead of the creation of jobs, the retention of at least 100 jobs shall be
required. Jobs for a Basic PILOT are scored in accordance with the PILOT Evaluation Matrix.

2. Wages. The wage requirements and scoring are the same as for a Basic PILOT, except that in the case of a Retention PILOT, the Wage requirement is increased to a minimum of 100% of the then current Shelby County Average Annual Wage. Wages for a Basic PILOT are scored in accordance with the PILOT Evaluation Matrix.

3. Benefits. The benefit requirements for a Basic PILOT are scored in accordance with the PILOT Evaluation Matrix.

4. Capital Investment. In order to be considered for a CRC incentive, an Applicant must acquire or lease real property with an appraised value of at least $500,000, in addition to meeting the Capital Investment criteria applicable to its Basic or Retention PILOT. This CRC investment will be counted towards the Project’s Basic or Retention PILOT Capital Investment requirement. For Basic PILOTs with CRC incentives, Points from the PILOT Evaluation Matrix for the Community Reinvestment Credit property may not exceed a total of ten (10) points. (See PILOT Evaluation Matrix for more detailed information.)

5. Location. Points for the location of a Basic PILOT will be in accordance with the PILOT Evaluation Matrix.

6. Special Consideration Points. Projects which enjoy CRC benefits are eligible for the same Special Consideration Points under the same limitations as are Basic PILOT Projects, and such points are awarded at the discretion of EDGE.

CRC PILOT Incentive Benefits and Payments/Annual Real Property Limit

The CRC essentially allows the same benefits and payments in lieu of taxes utilizing an existing structure as are allowed for a Basic PILOT or a Retention PILOT which is using new construction. However, the Policies and Procedures impose an annual limit on the award of such CRC benefits by EDGE.

The total amount of CRC benefits awarded in any calendar year for all Projects awarded a CRC incentive that year by EDGE and the IDB is limited to $2,100,000 (City of Memphis $900,000 / Shelby County $1,200,000) in actual property tax payments otherwise due for a period of one (1) year, at the then current approved tax values and property tax rates for the CRC properties. This limit shall be monitored by EDGE. The Mayors of Shelby County and of the City of Memphis (acting jointly if the Project is located within the Memphis City limits, or the Mayor of Shelby County alone, if not), may grant an exception to this CRC Annual Real Property Limit for a PILOT project, and thus authorize EDGE to waive its application, when they are of the opinion that such a waiver is in the best interests of the community.

Furthermore, the Annual Real Property Limit does not apply to PILOT projects involving the following:
A. Properties in the former Renewal Community census tracts and/or New Markets Tax Credit eligible areas, and other economic development target areas, as declared by the City of Memphis or Shelby County; or

B. Existing properties completed at least six (6) months prior to approval of the PILOT Resolution containing improvements with space that has never been leased or occupied.

VIII. PILOT APPLICATION INVOLVING A RELOCATION

In the case of a Relocation, as defined above, benefits of the PILOT for any real property under a Basic PILOT or a Retention PILOT, with or without a CRC incentive, shall apply only to the incremental increase in value. This incremental value is calculated based on square footage of the replacement facility — the facility to which the operation is being transferred — as compared with square footage of the existing facility. To qualify, the square footage of the replacement facility must exceed the square footage of the existing facility.

The PILOT payments shall be calculated to reflect, at a minimum, the taxes being paid on the Applicant’s facility prior to the move. This provision of the Policies and Procedures is referred to herein as the Relocation/Netting Provision. For example, according to this provision, an Applicant using 50,000 square feet of space, moving to a building with 75,000 square feet of space with a development cost (for new construction) or appraised value set by the Shelby County Assessor of Property (for existing structures) of $3,000,000 and granted a PILOT will have its incentive based on a value of (50,000 / 75,000) x $3,000,000 = $1,000,000. The Relocation/Netting Provision applies the same way whether the Applicant moves into a newly constructed building or into an existing building utilizing a CRC incentive.

EDGE may elect to waive the Relocation/Netting Provision, and provide the benefit of the PILOT for the entire replacement facility and related capital investment if it determines, based on evidence presented by Applicant, that the expansion and/or continued operation at its existing location is not practicable.

Furthermore, the Mayors of Shelby County and of the City of Memphis (acting jointly if the Project is located within the Memphis City limits, or the Mayor of Shelby County alone, if not) may grant an exception to this Relocation/Netting Provision for a PILOT Project, and authorize EDGE to waive its application when they are of the opinion that such a waiver is in the best interests of the community.

IX. SPECIAL INCENTIVES

Special incentives may be granted by EDGE for Basic PILOTS (regardless of whether or not they enjoy CRC benefits) in an effort to encourage sustainable communities and “green” buildings, as well as in an effort to reduce recidivism rates for current and recently released prisoners and to encourage diversity in employment.

No property, or portions of property under the PILOT program, however, shall receive PILOT benefits beyond the fifteen (15) year maximum as a result of the incentives set forth in this
1. **Green Initiatives.** This incentive awards additional time to the term of approved PILOT Projects for carrying out environmentally friendly practices through either of the two methods discussed below.

   A. **Leadership in Energy and Environmental Design ("LEED") Green Building Rating Certification**

   LEED is a third-party certification program and nationally-accepted benchmark for the design, construction, and operation of high performance "green" buildings. Projects that are awarded these LEED designations will be eligible for the following additional years to be added to their PILOT terms:

   - Certified: Add one (1) year
   - Silver: Add one (1) year
   - Gold: Add two (2) years
   - Platinum: Add two (2) years

   This designation must be awarded within one (1) year following the "Ramp-Up" Period for approved PILOT incentives.

   On a case-by-case basis, EDGE will consider acceptance of other national/international "green building" certifications that are also accepted by recognized authorities. These authorities include, but are not necessarily limited to: the U.S. Environmental Protection Agency and U.S. Department of Energy's Energy Star program, or green building certifications accepted by the U.S. General Services Administration (LEED, the Green Building Initiative’s Green Globes, and the International Living Future Institute’s Living Building Challenge). EDGE may require additional information on such non-LEED programs and will determine on a case-by-case basis the appropriate level of additional incentive earned.

   B. **Environmental Commitment Plan**

   As an alternative to "green building" certification, an Environmental Commitment Plan can be presented for approval and implementation. Approval of the Plan and compliance therewith would make the Project eligible for the extension of the PILOT term for the project by one (1) year. In order to be so eligible, the Applicant must show clear performance in two (2) or more of the key areas of human and environmental sustainability, several of which are outlined below. Specific performance measures for this component of the Green Initiatives Special PILOT incentive include, but are not limited to:

   i. **Company Fleets.** Utilization of alternative energy or environmentally friendly "street designated" company fleets (e.g., autos, delivery
trucks, etc., but not including fork lifts). At least twenty five percent (25%) of the vehicles in the fleet must be environmentally friendly, and the fleet must include at least fifty (50) environmentally friendly vehicles. The “environmentally friendly” designation can include, but is not limited to, vehicles that: are hybrid or battery-powered; use alternative fuels such as bio-fuels; use fuel cells; or are clearly identifiable vehicles, which, in their use, lessen negative impacts on the environment.

ii. Renewable Energy. Use of on-site renewable energy, such as solar, wind, microturbines, fuel cells, or other renewable energy, which represents at least twenty five percent (25%) of a PILOT facility’s annual energy use.

iii. Green Rooftops. Installation of green rooftops on PILOT facilities, which are designed to reduce energy costs, capture rainwater, and/or reduce storm water runoff. These rooftops must be more than incidental plantings or rooftop gardens, but must be designed to environmental standards that provide substantial reductions of adverse environmental factors. They can be designed as either extensive or intensive eco-roofs.

iv. Waste. Eighty five percent (85%) or more of manufacturing or processing waste is to be used in recycling, composting, or reuse in other processes. The intent is to keep waste products out of landfills and to have them used constructively. Waste stream audits, reports from recycling facilities, and other forms of documentation shall be required.

v. Ridesharing. Applicants with fifty (50) or more employees who can document that at least twenty five percent (25%) of their employees use carpooling, company vans, or public transportation strategies to commute to work on a daily basis. The intent is to encourage PILOT Recipients to keep private vehicles of its workers off of public streets as regards their daily commute. Memphis and Shelby County Health Department manages the local rideshare program and may provide the needed resources and tracking of compliance for this component.

vi. Water Conservation. Installation of water conservation measures and mechanisms including, but not limited to, low flow/waterless plumbing components, recycling, limited use or no use of lawn sprinkler systems, storm water site detention, and other strategies. Documentation must be provided to EDGE or its designee that these measures reduce the use of water by at least twenty five percent (25%) as compared to buildings that do not utilize water conservation measures. Documentation of compliance can include, but not be limited to, gallons used per person, overall water usage percentage for
comparable facilities, or related measures.

vii. Other factors not specifically mentioned here that lessen adverse environmental impacts and reduce the use of non-renewable resources as approved by EDGE.

To determine the eligibility of an Applicant’s proposed Environmental Commitment Plan for a Special Incentive or the compliance of an Applicant with an accepted Environmental Commitment Plan for a PILOT awarded, in whole or in part, under this Green Initiative category, EDGE reserves the right to retain the services of an outside expert, the expense of which shall be borne by the Applicant, provided that the estimated amount of said expense is pre-approved by the Applicant in writing.

2. **Prisoner Work-Release and Reentry Programs**

EDGE may award up to three (3) additional years to a PILOT term for a Project employing incarcerated individuals or formerly incarcerated individuals through a prisoner reentry program approved by the City of Memphis, Shelby County, the State of Tennessee, or the United States. Applicants seeking such extension must retain, at a minimum, the number of reentry employees committed to for the full term of the PILOT.

For companies that work with local, state, or federal programs to hire individuals who are currently incarcerated or individuals in a prisoner reentry plan approved by the City of Memphis, Shelby County, the State of Tennessee, or the United States, the following incentives may be awarded:

A. Applicants that hire 5-15 currently incarcerated/reentry employees may be eligible for a one (1) year PILOT term extension.

B. Applicants that hire 16-29 currently incarcerated/reentry employees may be eligible for a two (2) year PILOT term extension.

C. Applicants that hire 30+ currently incarcerated/reentry employees may be eligible for a three (3) year PILOT term extension.

All Applicants receiving benefits under this Program must, at a minimum, retain the specific number of currently incarcerated/re-entry employees committed to for the full term of the PILOT.

EDGE reserves the right to retain or secure outside experts to review and determine a PILOT Recipient’s compliance with the provisions of any PILOT awarded, in whole or in part, under this Prisoner Re-Entry Special Incentive, the expense of which shall be borne by the Applicant, provided that the estimated amount of said expense is pre-approved by the Applicant in writing.

3. **Diversity Plan**
If an Applicant submits a Diversity Plan that significantly exceeds EDGE’s Diversity Program goals, and the Project achieves its Diversity Plan goals, EDGE may authorize a one (1) or two (2) year extension of the PILOT term. EDGE shall, in its sole discretion, determine if additional years have been earned, and, if so, whether to award one (1) or two (2) additional years for its PILOT term. The Diversity Plan must be performed successfully over the life of the initial PILOT term in order for EDGE to grant final approval for the extension.

EDGE reserves the right to retain or secure outside experts to review a PILOT Recipient’s compliance with the provisions of its Diversity Plan and to assist it in determining whether the PILOT Recipient should be granted any additional years to its PILOT term for this Special Incentive under this subsection.

X. ASSIGNMENT

PILOT benefits are freely assignable to a Related Party, provided the original Applicant remains legally obligated to EDGE for the performance of those obligations owed to EDGE as set forth in the Resolution. The original Applicant and assignee, however, must provide written notice of such assignment to EDGE at or before the date of the assignment.

PILOT benefits are not assignable to an unrelated party without the prior written consent of EDGE. The party seeking such an assignment must file an application for the assignment of PILOT benefits with EDGE. Parties seeking a transfer or assignment of an existing PILOT to an unrelated party or a determination of whether, in the alternative, a new PILOT should be sought based upon a new PILOT application, shall confer with the Staff to determine the proper procedure. In the specific transaction, the Staff shall make a recommendation to EDGE after conferring with the parties, concerning the proper procedure with regard to the specific transaction, as to whether an assignment or a new application is recommended.

XI. APPLICATION PROCESS

Any person or entity which wants to have a PILOT application considered by EDGE, seeking a PILOT to encourage the location, expansion, and/or modernization of its operations within the City of Memphis and/or the unincorporated areas of Shelby County, shall be required to comply with the following application guidelines. Nothing within these guidelines 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 PILOTS. EDGE considers applications at duly called meetings conducted in compliance with the Sunshine Laws of the State of Tennessee. Monthly meetings may be waived or held at different locations and on dates selected at the discretion of EDGE.

1. 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 jobs, wages, capital investment and other PILOT criteria. 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.

2. **Explaining the Need for a PILOT.** Subject to exceptions specifically set forth herein, Basic PILOT Applicants shall submit a statement (1) demonstrating that the PILOT sought is an important component of an overall plan to achieve the subject economic development/project, and (2) what competitive advantages exist in other markets under consideration. Retention PILOT Applicants shall submit a statement (1) demonstrating that its local operations are at substantial risk of suffering a significant decline in local employment, and (2) what competitive advantages exist in other markets under consideration. 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.

3. **Application.** An application for a PILOT shall be made on the PILOT application form (Section XVII) or in conformance with said form. An application fee in accordance with Section XII must accompany any PILOT application. The application fee is non-refundable, but will be credited towards 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 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 at least five (5) EDGE Board members. Further, if a publically held corporation, the Applicant shall provide a copy of its latest annual report. If a privately held company, the Applicant shall provide a certified statement of the corporation’s net worth with corresponding disclosure notes as provided in the Applicant’s latest approved or audited financial statement.

Each application shall include statements that the Applicant complies with Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000d), as amended from time to time, and that the Applicant will provide certification of ongoing compliance in this regard with its annual report to EDGE.

4 **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. All Amendments must be approved by a majority of the EDGE Board members.

5. **Period Within Which Project Must Be Initiated.** Applicant must initiate its Project by closing on its real property Lease Agreement within one (1) year of the approval of the PILOT Resolution for the Project by EDGE, or by closing on its tangible personal
property Lease Agreement within two (2) years of the date of the approval of the PILOT Resolution for the Project by EDGE. Otherwise, Applicant will have to apply to EDGE for an extension of time within which to initiate its Project; or, in the alternative, Applicant will have to submit a new PILOT application for the Project at a later date.

XII. FEES

1. **Application Fees.** The application for a PILOT must be completed and submitted to EDGE with an application fee, calculated as follows:

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<tr>
<th>Estimated Project Investment @ Time of Application</th>
<th>Application Fee</th>
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<tbody>
<tr>
<td>0 - $750,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>$750,001 - $1,000,000</td>
<td>$1,500</td>
</tr>
<tr>
<td>$1,000,001 - $2,500,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>$2,500,001 - $5,000,000</td>
<td>$3,000</td>
</tr>
<tr>
<td>$5,000,001 +</td>
<td>$4,000</td>
</tr>
</tbody>
</table>

2. **Application Amendment Fee.** An amendment to an existing PILOT application shall require a fee of $1,000.

3. **Closing Fees.** 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) rather than on the total capital investment.

   The closing fee will be calculated at five percent (5%) of the property tax savings, with a minimum of $1,500 and a maximum of $300,000 owed for the entire Project, including both the City of Memphis and the Shelby County portions. The Company receiving the PILOT will also be responsible for paying any additional, unusual expenses (i.e., project compilation, copies, postage, long distance telephone calls).

   In the event that a property utilized for the Project is annexed into the City of Memphis after the lease transaction has first been closed on the property, an additional closing fee shall be assessed to the PILOT Recipient based upon the estimated City of Memphis property tax savings that would accrue to the PILOT Recipient as a result of the annexation, utilizing the same five percent (5%) rate; provided, however, that the aforementioned fee limit shall still apply to limit the total closing fees for both the City and the County portions.

   All Applicants are required to submit drafts of all closing documentation (including deeds, bills of sale and leases) to both EDGE Counsel and the Staff at least thirty (30) days prior to the anticipated closing date, where practicable, unless waived by EDGE. If EDGE PILOT Counsel has not received the required documentation within the thirty (30) days, the Applicant will forfeit 0.25% per month, or part of a month, of the PILOT application fee for every month the documentation is late.
4. **Personal Property Fees.** In addition to the Closing fees set forth herein, for all personal property that is the subject of a PILOT located in the City of Memphis, the Applicant shall pay an additional fee in the amount of five percent (5%) of the property taxes otherwise due to the City of Memphis up to a maximum fee of $50,000, and a fee in the amount of five percent (5%) of the property taxes otherwise due to Shelby County up to a maximum fee of $50,000.

For all personal property that is a subject of a PILOT located in Shelby County but outside of the City of Memphis, the Applicant shall pay a fee in the amount of five percent (5%) of the property taxes otherwise due to Shelby County, up to a maximum fee of $50,000.

These fees are in addition to the closing fees, but will be invoiced as part of the closing process.

5. **Penalties.** Upon the termination of a PILOT lease, EDGE shall provide written notification to the Applicant advising it of Applicant’s duty, pursuant to the lease, 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 all affected PILOT property to Applicant. Applicant’s failure to submit required documentation and approvals within ninety (90) days of the notification shall result in a penalty of $2,000 per month, which shall accrue for each month or part of a month in which Applicant fails to submit these documents after notification has been submitted by EDGE.

6. **Lease Amendments.** Amendments to existing PILOT leases shall require a fee of $1,000.

7. **Termination Fee.** All Applicants must pay a termination fee of $1,000 at the time of closing any Lease Agreements.

8. **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 approval of such assignment.

   A. One percent (1%) of the property tax savings up to $1,000,000, with a minimum fee of $4,000; plus

   B. 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.

XIII. PILOT CLOSING REQUIREMENTS

22
1. **Insurance**

EDGE must be listed as an additional insured on all real property insurance contracts, including, without limitation, title insurance policies and hazard insurance policies which cover property utilized for the Project and whose title has been conveyed to EDGE.

2. **Environmental Report Requirements.**

The Applicant must submit an Environmental Report for improved/developed property dated no more than three (3) months prior to its conveyance to EDGE, and an Environmental Report for unimproved/undeveloped property no more than six (6) months prior to its conveyance to EDGE. All Environmental Reports must explicitly grant to EDGE the right to rely on such reports. The Environmental Report and Applicant’s pre-acquisition review 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 applicable standards designed by the American Society for Testing and Materials (“ASTM”) as set forth below:

   A. Standard Practice for Environmental Site Assessments: ASTM E 1528-06 Assessments;

   B. Standard Practice for Site Assessments: Phase I Environmental Site Assessment Process, ASTM E 1527-05; and


All Phase I and Phase II Environmental Site Assessments submitted as part of the PILOT application process should substantially conform to the ASTM standards.

Subject to the specific provisions of a Project’s PILOT and/or Lease Agreement, the PILOT Recipient shall comply and ensure compliance with all applicable local, stated, and federal environmental laws and regulations. In the event that the PILOT Recipient discovers or receives notice from any governmental agency with regards to any environmentally hazardous material or condition affecting the Property, 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 actions necessary; and shall indemnify and hold harmless EDGE for any and all costs associated therewith, including any costs of litigation, if any.

3. **Personal Property Depreciation.**

At the initial and any subsequent closing of any personal property lease, the PILOT Recipient shall submit to EDGE and/or its agents a current Tennessee personal property depreciation schedule for personal property subject to the PILOT.
4. **Deadlines.**

**Real Property.** Projects that will have real property improvements made to the site after January 1 and by December 31 of the year of PILOT application approval should close on the Real Property Lease Agreement by December 31 of the year of PILOT Resolution approval. Usually EDGE will use the January 1 assessment for the year in which the subject real property is conveyed to it for purposes of calculating the amount of payment in lieu of tax; however, there are several exceptions to this practice, as, for example, noted in these Policies and Procedures for CRC benefits, and as also noted in EDGE’s Charter. Leases should be submitted to EDGE PILOT Counsel as early as possible, but no later than December 1, for review.

**Personal Property.** Projects that will have personal property on site by January 1 following the year of PILOT Resolution approval should close on the Personal Property Lease Agreement by December 31 of the year of PILOT Resolution approval. Leases should be submitted PILOT Counsel as early as possible, but no later than, December 1, for review.

**XIV. EVALUATION/COMPLIANCE**

To demonstrate that its actions in granting PILOT incentives for specified Projects promote the public good, EDGE requires the PILOT Recipient to certify each year that its jobs, average wages, Capital Investment and Diversity Plan goals are met; and, if not, to explain fully. Each year (or at such other times deemed appropriate) EDGE will evaluate each Project to ensure compliance with the terms of the PILOT Agreement and/or Lease Agreement.

Each year the PILOT Recipient shall provide information in the manner described in the PILOT Agreement and/or Lease Agreement and complete an Annual Performance Report Form (see Section XVIII), including, but not limited to, the following:

1. **Capital Investment** - The amount of Capital Investment made in real property and tangible personal property and associated with the Project.

2. **Employment Report** - The total number of employees and contract workers of the PILOT Recipient (multiple locations head count) and their total salaries/wages (including overtime pay, holidays, vacations, and bonuses, but excluding other benefits), and the number of employees and contract workers based at the Project, and their total salaries/wages. These jobs shall be reported in job classifications as required by EDGE.

3. **Personal Property** - For all tangible personal property that is a subject of the Project, a current depreciation schedule and a list of all replacements and/or disposals, with corresponding bills of sale.

In addition to (1) and (2) above, the PILOT Recipient will document the following through EDGE’s Diversity Program process:
3. **Minority/Woman/Small Businesses** - The dollar amount of contracts awarded to certified Minority/Woman Businesses Enterprises (MWBE) and certified Locally Owned Small Businesses (LOSB) as committed through the Diversity Program. Reports will be submitted quarterly showing the total amount of all contract payments and the amounts paid to MWBE and LOSB firms.

4. **Identified Labor Source** - The hiring and retention level (considering both turnover and new hires) of employees emanating from the Identified Labor Source.

5. **Diversity Plan.** All PILOT Recipients shall demonstrate a “good faith effort” to comply with their Diversity Plans, as approved by EDGE. Accordingly, they shall document compliance efforts with their contracting commitments and their employment commitment from the Shelby County Identified Labor Source.

Such Annual Reports shall be submitted by the PILOT Recipient to EDGE and/or its designated agent.

To the extent that any agency of the City of Memphis, Shelby County, or the State of Tennessee shall require any certain information or documentation regarding any certain Project, the Recipient shall provide or otherwise assist EDGE, as needed, in the production of such information or documentation.

If the Capital Investment, Jobs, Wage, Diversity Plan, and/or other performance by Applicant do not meet the conditions that EDGE placed on the Project when approved, the PILOT Recipient shall be deemed to be in default, and action will be taken as provided under the Resolution, PILOT Agreement, and/or Lease Agreement.

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 Resolution, PILOT Agreement, and/or Lease Agreements.

EDGE retains the right for its Staff and/or its agents to visit and inspect the Project during the term of the PILOT to ensure conformance with statements and representations made in the PILOT Agreement, Lease Agreement, and PILOT Resolution. Such inspections shall be made during the Project’s regular business hours, after reasonable advance notice (at least 48 hours) has been given.

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.

While any number of compliance inspections may be made at any time during the year, EDGE will conduct no less than a total of ten (10) such inspections each year, on Projects to be selected on a random basis, in accordance with the provisions above.

AL BRIGHT, JR.
CHAIRMAN OF BOARD OF DIRECTORS OF ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE

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

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

J. MARTIN REGAN, JR.
GENERAL COUNSEL TO ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
SECTION XV
I. **Eligibility for PILOT Incentives**

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>BASIC PILOT</th>
<th>BASIC PILOT WITH CRC INCENTIVES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Job Creation and Wages</td>
<td>A minimum of 15 Net New Jobs paying at least $10/hour.¹</td>
<td>Same as Basic PILOT.</td>
</tr>
<tr>
<td>Medical Benefits</td>
<td>Must provide medical benefits to employees and pay at least 50% of the cost of same.²</td>
<td>Same as Basic PILOT.</td>
</tr>
<tr>
<td>Capital Investment</td>
<td>At least $1,000,000 in new real and/or tangible personal property.</td>
<td>In addition to the Basic PILOT Capital Investment requirement, acquire or lease real property with an appraised value of at least $500,000, the value of which is applied to the Basic PILOT Capital Investment requirement.</td>
</tr>
<tr>
<td>Need for PILOT</td>
<td>Must demonstrate that the PILOT is an important component of an overall plan to achieve the subject economic development/project.</td>
<td>Same as Basic PILOT.</td>
</tr>
<tr>
<td>Diversity Plan</td>
<td>Must submit acceptable Diversity Plan.</td>
<td>Same as Basic PILOT.</td>
</tr>
<tr>
<td>Benefit/Cost Ratio</td>
<td>At least 1:1¹</td>
<td>At least 1:1³</td>
</tr>
<tr>
<td>Tax Clearance</td>
<td>Must demonstrate compliance with and payment of all municipal, county, state, and federal taxes due for all properties owned and located in Shelby County. Payment of taxes which are under appeal shall not be required until the appeal is finally resolved, as provided under law.</td>
<td>Same as for Basic PILOT.</td>
</tr>
</tbody>
</table>

¹ $10/hour minimum may be waived for Qualified Tourism Project.
² Medical benefits requirement may be waived for Qualified Tourism Project.
³ Transportation property, such as automobiles, watercraft, aircraft, and associated equipment, shall not be eligible for PILOT incentives and shall not be included as a part of an Applicant’s capital investment for the determination of eligibility for PILOT incentives. At the discretion of EDGE, other property supporting transportation property may be declared, on a case by case basis, to be eligible for PILOT incentives and/or included as part of an Applicant’s capital investment.
⁴ May be waived by 2/3 vote of EDGE board.
⁵ May be waived by 2/3 vote of EDGE board.
## PILOT Scoring Criteria

<table>
<thead>
<tr>
<th>Criteria</th>
<th>BASIC PILOT</th>
<th>BASIC PILOT WITH CRC INCENTIVES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Job Creation</strong>&lt;br&gt;(No Maximum)</td>
<td>Pts. will be awarded for each new job created by the Project and paying $10/hour or more (unless a Qualified Tourism Project and this minimum pay requirement is waived).&lt;br&gt;Pts. may be awarded as follows:&lt;br&gt;&lt;br&gt;<strong>Number of Jobs:</strong>&lt;br&gt;15 - 50: 1 pt. per 5 jobs, (maximum 10 pts.)&lt;br&gt;PLUS 1 pt. for every 10 jobs after the first 50 jobs&lt;br&gt;Example: 500 jobs — 55 pts.&lt;br&gt;800 jobs — 85 pts.&lt;br&gt;1,000 jobs — 100 pts.</td>
<td>Same as Basic PILOT.</td>
</tr>
<tr>
<td><strong>Wages</strong>&lt;br&gt;(No Maximum)</td>
<td>Annual average wages (&quot;AAW&quot;) at or above 75% of Shelby County AAW may be awarded pts. as follows:&lt;br&gt;AAW of 75% of the Shelby County AAW - 10 pts.&lt;br&gt;PLUS 2 pts. for each additional 5%. Example:&lt;br&gt;90% — 16 pts.&lt;br&gt;100% — 20 pts.&lt;br&gt;125% — 30 pts.&lt;br&gt;150% — 40 pts.</td>
<td>Same as Basic PILOT.</td>
</tr>
<tr>
<td>CRITERIA</td>
<td>BASIC PILOT</td>
<td>BASIC PILOT WITH CRC INCENTIVES</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Capital Investment⁶ (No Maximum)</td>
<td>Capital investment, per $1,000,000 invested, will be awarded pts. as follows:</td>
<td>New capital investment, per $1,000,000 invested, will be awarded pts. as follows:</td>
</tr>
<tr>
<td></td>
<td>Each $1,000,000 of investment</td>
<td>Each $1,000,000 of new capital investment</td>
</tr>
<tr>
<td></td>
<td>1 pt.</td>
<td>1 pt.</td>
</tr>
<tr>
<td>Location (Maximum 30 pts.)</td>
<td>Projects locating within City of Memphis and/or enumerated target areas, will receive pts. as follows:</td>
<td>Existing building per each $1,000,000 based upon Shelby County Assessor’s appraised value:⁷</td>
</tr>
<tr>
<td></td>
<td>Within the City of Memphis</td>
<td>1 pt. (maximum 10 pts.)</td>
</tr>
<tr>
<td></td>
<td>10 pts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>PLUS any ONE of the following that applies:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Former Renewal Community properties:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>20 pts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- New Market Tax Credit:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>10 pts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Other City Target Areas</td>
<td></td>
</tr>
<tr>
<td></td>
<td>10 pts.</td>
<td></td>
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<tr>
<td></td>
<td>- Frank Pidgeon Area</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- State &amp; Federal Designated Brownfields</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Urban Economic Revitalization Areas</td>
<td></td>
</tr>
</tbody>
</table>

⁶ Transportation property, such as automobiles, watercraft, aircraft, and associated equipment, shall not be eligible for PILOT incentives and shall not be included as a part of an Applicant's capital investment. At the discretion of EDGE, other property supporting transportation property may be declared, on a case by case basis, to be eligible for PILOT incentives and/or included as part of an Applicant’s capital investment.

⁷ The scoring of net investment for a PILOT involving a Relocation is subject to the “netting” provision set forth in Section VIII of the EDGE PILOT Program Policies and Procedures.
<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>BASIC PILOT</th>
<th>BASIC PILOT WITH CRC INCENTIVES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Considerations</td>
<td>1. Targeted Industries:</td>
<td>Same as Basic PILOT.</td>
</tr>
<tr>
<td>(Total Maximum: 25% of Matrix Score before Special Considerations Points taken into account; category maximums shown) (Benefit to Cost Ratio must exceed 1:1 after special consideration points applied)</td>
<td>o Biomedical (research and manufacturing);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>o Electronics (assembly, repair and manufacturing);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>o Manufacturing (food processing, chemical, alternative fuels, automobile, and other manufacturing);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>o Information Technology;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>o Logistics, Music and Film, or Tourism</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 pts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. Regional, District, National, or International Corporate Headquarters:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 pts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. Fortune 500/Global 1,000 companies, or Nationally Recognized Industry Leader:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 pts.</td>
<td></td>
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<tr>
<td></td>
<td>4. Major Employers (employing 500+ jobs in Shelby County)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 pts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. Minority/Women-owned Business:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 pts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6. Benefit to Cost Ratio Exceeds 3:1:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>20 pts.</td>
<td></td>
</tr>
</tbody>
</table>
III. Basic PILOT Term

A. Base Calculation

Based on the “score” generated based on the total points of the Project listed above, the Project may be given a PILOT term as follows:

<table>
<thead>
<tr>
<th>POINTS</th>
<th>PILOT TERM</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 31</td>
<td>0 years</td>
</tr>
<tr>
<td>31-40</td>
<td>3 years</td>
</tr>
<tr>
<td>41-50</td>
<td>4 years</td>
</tr>
<tr>
<td>51-60</td>
<td>5 years</td>
</tr>
<tr>
<td>61-70</td>
<td>6 years</td>
</tr>
<tr>
<td>71-80</td>
<td>7 years</td>
</tr>
<tr>
<td>81-90</td>
<td>8 years</td>
</tr>
<tr>
<td>91-100</td>
<td>9 years</td>
</tr>
<tr>
<td>101-110</td>
<td>10 years</td>
</tr>
<tr>
<td>111-120</td>
<td>11 years</td>
</tr>
<tr>
<td>121-130</td>
<td>12 years</td>
</tr>
<tr>
<td>131-140</td>
<td>13 years</td>
</tr>
<tr>
<td>141-150</td>
<td>14 years</td>
</tr>
<tr>
<td>&gt; 150</td>
<td>15 years</td>
</tr>
</tbody>
</table>

Absent approval from the Memphis City Council (if located within the Memphis City Limits) and Shelby County Board of Commissioners, no PILOT may be awarded for a term longer than fifteen (15) years.

B. Additional Years

The length of the PILOT agreement may be extended beyond the number of years indicated by the matrix for projects that meet the criteria for any of the special initiatives listed below. However, the PILOT term cannot be extended beyond fifteen (15) years without approval from the Memphis City Council (if located within the Memphis City Limits) and Shelby County Board of Commissioners, and the benefit to cost ratio must still exceed one to one when any special incentives are applied.
1. **Green Initiatives**

   a. Leadership in Energy Environmental Design ("LEED") Certification

   Projects that are awarded LEED designations will be eligible for the following additional years of real and personal property PILOT incentives:

<table>
<thead>
<tr>
<th>Level of Certification</th>
<th>PILOT Term Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certified/Silver</td>
<td>1 year</td>
</tr>
<tr>
<td>Gold/Platinum</td>
<td>2 years</td>
</tr>
</tbody>
</table>

   This designation must be awarded within one (1) year following the "Ramp-Up" Period for approved PILOT incentives.

   On a case-by-case basis EDGE will consider acceptance of other national/ international "green building" certifications that are also accepted by recognized authorities. These authorities include, but are not necessarily limited to: the US Environmental Protection Agency and US Department of Energy's Energy Star program, or green building certifications accepted by the US General Services Administration (LEED, the Green Building Initiative's Green Globes, and the International Living Future Institute's Living Building Challenge). EDGE may require additional information on non-LEED programs and will determine on a case-by-case basis the appropriate level of additional incentive earned.

   b. Environmental Commitment Plan. As an alternative to obtaining LEED or other acceptable certification, an Applicant may submit an Environmental Commitment Plan. Approval of and compliance with such a Plan will make the Project eligible for the addition of one (1) year to the PILOT term on real and/or personal property.

2. **Prisoner Work-Release and Reentry Programs**

   For companies that work with local or state programs to hire individuals who are currently incarcerated or individuals in a prisoner reentry plan approved by the City of Memphis, Shelby County, or the State of Tennessee, the following incentives may be awarded for a Basic PILOT:
<table>
<thead>
<tr>
<th>Number of Qualifying Individuals</th>
<th>PILOT Term Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-15</td>
<td>1 year</td>
</tr>
<tr>
<td>16-29</td>
<td>2 years</td>
</tr>
<tr>
<td>30+</td>
<td>3 years</td>
</tr>
</tbody>
</table>

In order to receive benefits under this section, the PILOT Recipient must retain the specific number of incarcerated/re-entry employees for the full term of the PILOT.

3. Diversity Plan

For a diversity plan that significantly exceeds the basic requirements and goals established by EDGE, a Basic PILOT may be extended 1 or 2 years. The company must fulfill the diversity plan goals during the initial PILOT term to receive the extension.
MEMPHIS & SHELBY COUNTY
INDUSTRIAL DEVELOPMENT BOARD

DIVERSITY PROGRAM

2009

An economic development requirement of the Payment-in-lieu-of-tax (PILOT) and Industrial Development Bond programs formerly entitled the “Jobs Plus” Program

125 North Main Street, Room 468
Memphis, Tennessee 38103
901-576-7107 Fax: 901-576-7101

Adopted January 16, 2008
Final—October, 2009
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Appendix 1: Contacts & Descriptions

Appendix 2: Sample Diversity Plan

Adopted January 16, 2008
Final—October, 2009
MEMPHIS & SHELBY COUNTY INDUSTRIAL DEVELOPMENT BOARD
DIVERSITY PROGRAM

PROGRAM SUMMARY

PURPOSE
Memphis and Shelby County governments offer economic development incentives, such as the payment-in-lieu-of-tax program (PILOT), to companies expanding or locating in this community to stimulate business growth and foster job creation. Companies are able to reduce the cost of doing business by taking advantage of local, State and Federal tax incentives. In Memphis and Shelby County, the total benefit provided to these new and expanding companies is based on capital investment, jobs, wages and business location.

To encourage the support and inclusion of minority, women, and locally owned small businesses and citizens of Memphis and Shelby County in the economic development of the local community, the Memphis and Shelby County Industrial Development Board (IDB) has adopted a Diversity Program. The program is an effort to assure that companies receiving PILOT benefits purchase goods and services from minority, women and locally owned small businesses and hire Memphis area residents.

Memphis and Shelby County legislators made sweeping changes to the PILOT program in 2007 that included requiring participation in the Jobs Plus Program by every company taking advantage of the PILOT program incentives. The Diversity Program incorporates the incentives outlined in the “Jobs Plus” optional program that was initiated in 2001. Eligibility for a PILOT in Memphis and Shelby County is now based on the applicant’s capital investment, jobs, wages, business location and submission and achievement of a Diversity Plan.

It is the intent of the IDB to facilitate awareness and cooperation by providing assistance to applicant firms in formulating an acceptable Diversity Plan. This Program is to be utilized by all entities seeking payment-in-lieu-of-tax (PILOT) Incentives, Tax Credits, or Bonds from the IDB.
OVERVIEW
As of January, 2008, every applicant seeking benefits from the Memphis and Shelby County Industrial Development Board (IDB) is required to submit a custom-tailored Diversity Plan with the help of IDB staff (Business Resource Group). The applicant’s plan will be utilized as part of the staff recommendation to the full IDB.

In order to establish local spending and hiring goals in the Plan, the PILOT applicant will outline a baseline estimate of planned expenditures for professional services, construction, and goods and non-professional services, along with the applicant’s planned job creation for the proposed PILOT or bond issue project. IDB staff will work with each PILOT and/or bond issue applicant to: 1) evaluate the applicant’s overall spending and hiring needs; and 2) set appropriate and mutually beneficial goals covering the purchase of goods and services and hiring that will insure the inclusion of Minority and Women Business Enterprises (M/WBE), Locally-Owned Small Businesses (LOSB) and persons enrolled in the Identified Labor Source (ILS) through the Memphis Area Career Centers. See Appendix 1 for definitions of M/WBE, LOSB and ILS.

Every applicant will be supplied a comprehensive list of M/WBEs certified by the City of Memphis Office of Contract Compliance and LOSBs certified by the Shelby County Office of Equal Employment Opportunity, along with information on the availability of ILS workers. From this information, the company and IDB staff will formulate Diversity Plan participation goals for the purchase of goods and services and hiring of employees through the ILS.

Once the PILOT and/or bond issue and Diversity Plan have been approved by the IDB, the Diversity Plan will become a part of the company’s incentive agreement. Quarterly and annual reports will help the IDB assure that the goals are being met. If changes occur and goals need to be adjusted, a process is in place to revise the company’s Diversity Plan. A PILOT company must produce a Diversity Plan, follow the plan, file all required reports and reasonably achieve all of the plan’s goals throughout the years of the PILOT. Each PILOT company may submit a Diversity Plan that significantly exceeds the basic diversity plan goals. The IDB may approve the proposed plan and authorize one or two additional benefit years at the time of the PILOT application, subject to the successful completion of the plan. If the plan goals are obtained, the IDB shall award an additional one or two years of benefits as agreed at the outset.

If a PILOT company exhibits a “good faith effort” in working to achieve and/or revise the plan’s goals, files all of the required reports but in good faith does not achieve its goals, the PILOT benefit will not be modified. Examples of “good faith effort” shall include, but not be limited to, documented proof of the PILOT company’s efforts to comply with more than one of the following activities:

- (i) to maintain open communication with the Diversity Contractor and/or Compliance Officer concerning efforts to follow Diversity Plan;
- (ii) to provide quarterly and annual reports to the Diversity Contractor as required;
- (iii) to utilize local, minority, or women owned businesses to meet its obligations to the IDB;
- (iv) to use the Memphis Career Center and/or placement agencies to hire minority, women or other disadvantaged workers;

Adopted January 16, 2008
Final—October, 2009
• (v) to coordinate with educational institutions or other training agencies to find and train suitable employees to meet its Diversity Plan Goals;
• (vi) to advertise in local, regional or national publications to attract workers to meet its Diversity Plan Goal;
• (vii) to use of advertisements and bidding processes targeted to attract and use local and small businesses; or
• (viii) to work with Diversity Contractor in the establishment and implementation of an Outreach Plan.

If the PILOT company was initially awarded additional tax benefit based on the Diversity Plan, the additional periods may be reduced at the discretion of the IDB for failure of the PILOT company to attain the stated goals.

If the PILOT applicant does not produce a Diversity Plan, it will not be considered for a PILOT. If a PILOT company files no reports or does not show a "good faith effort" to participate in the Diversity Program with the IDB, the PILOT company will be considered in default of the PILOT program and could lose some or all of its tax incentives. The severity of the penalty will be a matter for consideration by the IDB Performance and Review Committee with final resolution of the penalty to be made by the full IDB. Regular review of the Diversity Plan is crucial and every company is encouraged to maintain open communication with the Diversity Contractor and IDB staff regarding any changes, updates or questions which will prove a "good faith effort" in following the submitted plan.

OVERALL GOALS OF THE DIVERSITY PLAN

GOALS OF LOCAL GOVERNMENT PROGRAMS
As the Industrial Development Board (IDB) is a joint entity created by the City of Memphis and County of Shelby, it is imperative that the interests of both governmental entities be represented. Overall businesses that contract with the City of Memphis must fulfill goals as set by the Minority and Women Business Enterprise (M/WBE) Procurement Program. Those businesses that contract with the Shelby County Government must fulfill goals as set by the Locally Owned Small Business (LOSSB) Program. Below are the goals as set by those governmental agencies.

Professional Services
• 24% goal – City M/WBE
• 10% goal – County LOSB

Construction Needs
• 25% goal – City M/WBE
• 10% goal – County LOSB

Goods & Non-professional Services
• 25% goal – City M/WBE
• 10% goal – County LOSB
GOALS TO BE ESTABLISHED IN THE APPLICANT’S DIVERSITY PLAN

The local government goals are used as a reference point but not as a hard and fast rule for applicants. Each applicant of the PILOT program or bond financing program shall participate in the development of their Diversity Plan based on information provided by the applicant. To assist in the identification of eligible M/WBEs and OSBs, IDB staff will provide each applicant with a list of certified vendors. If the PILOT company wishes to use a firm that is not a certified City M/WBE or County OSB firm then the PILOT company shall submit the firm to the City’s Contract Compliance Office or the County’s Employment Opportunity Compliance Office for certification.

In addition to the purchase of goods and services goals, companies must establish a goal, appropriate to the project and/or industry, for hiring Workforce Investment Act participants through the Identified Labor Source (ILS). It is recommended that the range of participation in ILS is:

Shelby County Identified Labor Source (ILS)
15%-20% goal – ILS

DIVERSITY PLAN DEVELOPMENT PROCESS

The Diversity Plan Development Process is outlined below. At the conclusion of the process, the applicant should have a Diversity Plan approved by the Industrial Development Board (IDB) which shall be attached to their PILOT agreement and/or bond documents.

Informational Meeting
Company considering locating to Memphis and Shelby County will attend an introductory meeting and/or One-Stop-Shop meeting to learn about various local, State and Federal incentives. Summary information will be provided about the PILOT and Diversity Programs.

PILOT Evaluation
Company will work with IDB staff and attorney to evaluate the feasibility of a PILOT with information about the company’s plans for capital investment, job creation, wages, business location and local spending and hiring. If the project is eligible for a PILOT, a pre-application evaluation will be drafted by IDB staff and, with IDB staff assistance, a PILOT application and a Diversity Plan will be developed by the applicant for presentation to the full IDB.

Development of Diversity Plan
1. Applicant will provide estimates of planned expenditures and job creation for the project to the Diversity Contractor (Business Resource Group).
2. Diversity Contractor will evaluate the Applicant’s overall spending and hiring needs.
3. Applicant and Diversity Contractor will set appropriate and mutually beneficial goals and draft the company’s Diversity Plan. See Appendix 2 for a Sample Diversity Plan.
4. Applicant will submit a PILOT application and a Diversity Plan for review by the IDB.
5. Upon approval of the PILOT and Diversity Plan, the IDB shall sign the agreed upon Diversity Plan.
6. The Diversity Plan shall become an integrated part of the incentive agreement.

Adopted January 16, 2008
Final—October, 2009
7. Upon approval by the IDB, the applicant will be responsible for Diversity Plan compliance.

COMPONENTS OF DIVERSITY PLAN

There are two main components and one auxiliary component of the Diversity Plan as appropriate to the project and/or industry: 1) contracting with minority, women and locally owned small businesses; 2) employment of participants in the Shelby County Identified Labor Source; or 3) provide other significant programs that further the policies of the Diversity Program as approved by the IDB. However, the IDB expects all Applicants to make a good faith effort to utilize the first two components in their Diversity Plan.

Contracting

Applicants to the IDB will work with the Diversity Contractor (Business Resource Group) to contract with Minority and Women Business Enterprises (M/WBE) certified through the City of Memphis Office of Contract Compliance and with Locally-Owned Small Businesses (LOSB) certified through the Shelby County Office of Equal Opportunity Compliance. In evaluating an Applicant's overall business activities, several categories of business will be considered. These categories include Professional Services, Construction, Goods and Non-professional Services.

Professional Services include, but are not limited to various disciplines such as:
- Architectural
- Engineering
- Accounting
- Information Systems
- Legal
- Professional Studies
- Surveying Services

Construction services may include the actual building or renovation of a structure, paving, and/or demolition services, etc.

Goods include, but are not limited to the purchase of items such as:
- Office supplies
- Promotional items
- Furniture
- Vehicles
- Heavy equipment

Non-professional Services may include building maintenance, security/guards, and janitorial services, etc.

Identified Labor Source

The IDB works with the Memphis Area Career Center to fulfill the goals of economic development and job creation. The Memphis Area Career Center, established as a result of Workforce Investment Act of 1998, provides a broad network of services centered ar
placement, retention, career advancement and training. Identified Labor Source (ILS) participants encompass all registered Workforce Investment Act customers who are unemployed, underemployed and/or employed. Job seekers and businesses can access services at one of the eight centers in Memphis and Shelby County.

**COMPLIANCE**

**INCENTIVES**
No PILOT company may receive tax benefits based on the Diversity Plan approved by the IDB prior to the fulfillment of the Diversity Plan terms. These benefits may extend the PILOT for one to two years as awarded by the IDB and upon the actual achievement of the goals of the company’s Diversity Plan. The IDB Compliance Officer will annually audit for compliance based on the January 15th annual report.

**PENALTIES FOR NON-COMPLIANCE**
If no additional periods are awarded by the IDB, the PILOT company must show a “good faith effort” to comply with its approved Diversity Plan. If the PILOT company does not file any reports nor show a “good faith effort” to participate in the Diversity Program with the IDB, the PILOT company will be considered in default of the PILOT program and could lose some or all of its tax incentives. The severity of the penalty will be a matter for consideration by the IDB Performance and Review Committee as recommended by the IDB Compliance Officer with final resolution of the penalty to be made by the full IDB. However, the IDB will generally consider the first determination that a PILOT company has not acted in good faith as a warning. If the IDB determines that a PILOT company has failed to act in “good faith” for two consecutive years or if the PILOT company has been decided to not act in “good faith” for three years of the term of its benefit, the IDB may terminate all PILOT benefits.

**STEPS TO MAINTAIN COMPLIANCE**
After the IDB has approved and issued benefits to the PILOT company, the company must remain in compliance with the Diversity Plan in order to maintain the approved PILOT benefits.

A. Diversity Plan Reporting Procedures
1. Quarterly reports will reflect dollars spent, percentage of total expenditures per category and company names of vendors. Reports will be submitted by April 15th, July 15th, October 15th (collectively, the ‘Preliminary Reports’) and January 15th (the ‘Diversity Program Annual Report’) to the IDB for review by the IDB Compliance Officer. IDB Compliance Officer will work with the applicant to address deficiencies in its performance and will make recommendations to the Performance Committee and IDB.
2. The IDB Compliance Officer will review reports for compliance. At the end of the quarter, the IDB will be updated on the status of the Diversity Plans.
3. Applicants will be subjected to periodic audits of the information provided.

B. Compliance
1. If a PILOT company produces a Diversity Plan, follows the plan, files all required reports and achieves all of the plan’s goals throughout the years of the PILOT, the
company is entitled to receive the tax benefits associated with the Diversity Plan approved at the time of the PILOT application.

2. If a PILOT company produces a Diversity Plan, follows the plan, files all of the required reports but does not achieve its goals, the company must exhibit a “good faith effort” to comply with the mandatory requirements of the Diversity Program. Examples of “good faith effort” shall include, but not be limited to, documented proof of the PILOT company’s efforts to comply with more than one of the following activities:
   - (i) to maintain open communication with the Diversity Contractor and/or Compliance Officer concerning efforts to follow Diversity Plan;
   - (ii) to provide quarterly and annual reports to the Diversity Contractor as required;
   - (iii) to utilize local, minority, or women owned businesses to meet its obligations to the IDB;
   - (iv) to use the Memphis Career Center and/or placement agencies to hire minority, women or other disadvantaged workers;
   - (v) to coordinate with educational institutions or other training agencies to find and train suitable employees to meet its Diversity Plan Goals;
   - (vi) to advertise in local, regional or national publications to attract workers to meet its Diversity Plan Goal;
   - (vii) to use of advertisements and bidding processes targeted to attract and use local and small businesses; or
   - (viii) to work with Diversity Contractor in the establishment and implementation of an Outreach Plan.

C. Non-Compliance
1. If a PILOT company fails to work in good faith to comply or achieve the goals as set forth by the Diversity Plan, the Diversity Contractor will work in conjunction with the company to either adjust the goals or implement an Outreach Plan that would provide assistance in connecting with all possible M/WBEs, LOSBs, and ILS candidates to facilitate the achievement of the previously set goals.
2. Within thirty (30) days notice of the non-compliance, after submission of the Diversity Program Annual Report, the Diversity Contractor will notify the PILOT company that an Outreach Plan needs to be implemented.
3. The PILOT company will have thirty (30) days after notification from the Diversity Contractor of an Outreach Plan to agree and implement the Plan.
4. Upon receipt of an additional deficient Diversity Program Annual Report, the IDB Compliance Officer will review and determine if the goals need to be adjusted or if the PILOT company is failing to put forth “Good Faith Efforts” in the accomplishment of the goals agreed upon by the Applicant.
   a. If the goals need to be adjusted, Diversity Contractor and Compliance Officer will make recommendations to the Performance Review Committee. The Performance Review Committee will determine if the goal adjustment is acceptable and appropriate. Then the Performance Review Committee will put forth the issue before the full IDB for a vote of concurrence with the recommendation.
   b. If it appears that the PILOT company has no intention of putting forth a “good faith effort” to achieve the Diversity Plan, the issue will be brought before the
The Performance Review Committee in order to reconsider the issuance of benefits. The Performance Review Committee shall issue any default notices.

c. If the PILOT company has two (2) determinations in a row of a failure to make "good faith effort" as determined by the IDB's reasonable determination or (3) three determinations during the term of the initial benefits, the IDB may terminate all PILOT benefits associated with the project after providing written notice and an opportunity for the PILOT company to present its information to the Performance Committee and the IDB. Notwithstanding the above, nothing herein shall prevent the IDB from taking immediate action if the applicant is not acting in good faith as reasonably determined by the IDB.
Appendix 1: CONTACTS AND DEFINITIONS

DIVERSITY CONTRACTOR FOR IDB
Carol Crawley
Business Resource Group
P.O. Box 383301
Germantown, TN 38183
901-276-0157 office
901-276-0159 fax
carolgcrawley@bellsouth.net

CITY OF MEMPHIS MINORITY/WOMEN BUSINESS ENTERPRISES (M/WBE)
Carlee McCullough
City of Memphis Contract Compliance Officer
125 North Main Street, Room 440
Memphis, TN 38103
901-576-6545 office
901-576-6560 fax
carlee.mccullough@memphistn.gov

City of Memphis Contracted Central Certification Agency
Luke Yancy
Mid-South Minority Business Council
158 Madison, Avenue, Suite 300
Memphis, TN 38103
901-525-6512 office
901-525-5204 fax
lyancy@mmbc-memphis.org

SHELBY COUNTY LOCALLY-OWNED SMALL BUSINESSES (LOSB)
Carolyn Watkins
Shelby County of Equal Opportunity
160 North Main, Suite 969
Memphis, TN 38103
901-545-4336 office
901-545-3473 fax
carolyn.watkins@shelbycountytn.gov

IDENTIFIED LABOR SOURCE
Jimmy Tiggers
Memphis Area Career Center
444 North Main, 2nd floor
Memphis, TN 38105
901-545-2172 office
901-545-2202 fax
jimmy.tiggers@memphistn.gov

Adopted January 16, 2008
Final—October, 2009
MEMPHIS & SHELBY COUNTY INDUSTRIAL DEVELOPMENT BOARD STAFF
Joann Massey, Compliance Officer
Memphis & Shelby County Office of Economic Development
125 N. Main, Room 468
Memphis, TN 38103
901-576-7107 office
901-576-7160 direct
901-576-7101 fax
Joann.Massey@memphistn.gov

ACRONYMS

IDB  Memphis and Shelby County Industrial Development Board
PILOT  Payment-in-lieu-of-tax
M/WBE  Minority and Women Business Enterprise
LOCALSB  Locally Owned Small Business
ILS  Identified Labor Source

IDB COMMITTEES

EVALUATION COMMITTEE
Recommends approval of Diversity Plan for final decision by full IDB. Makes recommendations for initial PILOT approval.

PERFORMANCE AND REVIEW COMMITTEE
Reviews Diversity Plans plan for compliance as presented by IDB Compliance Officer. Makes recommendations to IDB for enforcement of PILOT and Diversity Plan.

IDB
Makes all final decisions on PILOTs and bond issues, approves Diversity Plan and enforces PILOT and Diversity Plan policies.
Appendix 2: Sample Diversity Plan

We acknowledge our understanding of the commitment(s), requirements for implementation, on-going participation and quarterly reporting requirements for compliance. ______________________ agrees to participate in the following manner:

CONTRACT with local minority, women-owned and small businesses (Memphis and Shelby County based) firms that are certified vendors through the Shelby County Office of Equal Opportunity Compliance or the City of Memphis on terms that are agreed as outlined below.

Contracting: We agree to achieve the following percentages annually with MWBEs and LOSBs:

<table>
<thead>
<tr>
<th></th>
<th>M/WBE &amp; LOSB</th>
<th>Total Spending</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction/Tenant Impr.</td>
<td>$1,250,000</td>
<td>$5,000,000</td>
<td>25%</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$250,000</td>
<td>$1,000,000</td>
<td>25%</td>
</tr>
<tr>
<td>Goods</td>
<td>$100,000</td>
<td>$500,000</td>
<td>20%</td>
</tr>
<tr>
<td>Non-Professional Services</td>
<td>$25,000</td>
<td>$100,000</td>
<td>25%</td>
</tr>
<tr>
<td>Total</td>
<td>$1,625,000</td>
<td>$6,600,000</td>
<td>24.6%</td>
</tr>
</tbody>
</table>

HIRE identified labor source (ILS) employees through the designated agency, The Memphis Area Career Center.

Identified Labor Source: We agree to hire and maintain an annual average level of 15% (or 10 employees whichever is greater), of our committed new jobs through the Memphis Area Career Centers.
PILOT Firm Representative

Title

Chairman/Vice Chairman
Memphis & Shelby County
Industrial Development Board

This agreement must be executed upon approval of the PILOT by the IDB.
SECTION XVII
PAYMENT-IN-LIEU-OF-TAX APPLICATION

ECONOMIC DEVELOPMENT
GROWTH ENGINE
FOR MEMPHIS & SHELBY COUNTY

100 Peabody Place, Suite 1100
Memphis, TN 38103
(901) 341-2100

Adopted February 20, 2013

Memphis and Shelby County governments, through the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee ("EDGE"), offer the payment-in-lieu-of-tax ("PILOT") incentive to companies expanding or locating in this community in order to stimulate business growth and foster job creation. Companies that obtain a PILOT through EDGE and/or its affiliated entities can pay reduced Memphis and Shelby County real property taxes and/or personal property taxes for three or more years, depending on the project criteria established by EDGE and listed in the EDGE PILOT Program Policies and Procedures.¹

About the PILOT Application

The Payment-in-Lieu-of-Tax Application provides EDGE with specific information about the Project. The information serves as the basis for fiscal analysis and overall Project evaluation.

Pre-Application Meeting

Applicants should meet with a member of the EDGE staff prior to the submission of a full PILOT Application. This meeting is to familiarize all parties with the Project and serves to inform the Applicant about the PILOT policies as well as the general submittal process. Basic application information containing estimates on the number of jobs, wages, benefits, capital investment, and potential location, should be prepared by the Applicant for this meeting.

Please note that any document provided by the Applicant to the EDGE staff or Board is subject to public disclosure pursuant to the Tennessee Public Records Act, codified at Tennessee Code Annotated section 10-7-503, et seq.

When is the Application Final?

It is not uncommon for an Applicant to submit Application drafts for informational and evaluative purposes only. As conversations continue, the Applicant will submit a final version of the Application that includes all of the terms agreed to during the discussions.

¹ PILOT terms are generally limited to a maximum of fifteen (15) years. In addition to approval by EDGE, PILOT terms exceeding fifteen years require approval of the Shelby County Board of Commissioners and, if the Project is located in whole or in part within the City of Memphis, approval by the Memphis City Council. PILOT terms longer than twenty (20) years also require approval by the Tennessee Commissioner of Economic and Community Development and the Comptroller of the Treasury. See Tenn. Code Ann. § 7-53-304(b)(1).
Who is Authorized to Approve the PILOT Agreement and Lease Agreement?

The City of Memphis and Shelby County have delegated to EDGE the power to represent Memphis and Shelby County in discussions regarding PILOT incentives. All conversations between the EDGE and/or its agents and the Applicant should be entered into with the understanding that any and all elements of the PILOT are subject to the approval of the Board of Directors of EDGE.

What Other Documents are Required for the Application?

In addition to other documentation required as set forth in this Application form for specific types of companies and for Applicants seeking Special Incentives, all Applicants must provide the following:

- Completed Application form;
- Vicinity Map of the Project location;
- Property tax record from the Shelby County Assessor's Office for the real property of the Project location, if real property benefits are being sought;
- Audited financial statements for the most recent three (3) years;
- Documentation demonstrating compliance with and payment of all municipal, county, state, and federal taxes due for all properties owned by the Applicant within Shelby County;
- Certification demonstrating Applicant’s compliance with Title VI of the 1964 Civil Rights Act; and
- Diversity Plan.

There is an Application Fee as described in the PILOT Program Policies and Procedures. EDGE staff will assist the Applicant in determining the fee in the Pre-Application Meeting.

How Many Copies of the Application Will the Industrial Development Board Need?

Submit one (1) electronic copy (email or CD) of the Application. The Application must be submitted at least ten (10) business days prior to the Board meeting to be considered at the next Board meeting.

All applications should be submitted to:

EDGE Industrial Development Board
100 Peabody Place, Suite 1100
Memphis, Tennessee 38103

or

application@growth-engine.org
APPLICATION FOR PILOT
ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF
CITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE

1. Applicant—Any entity with legal or economic responsibility for the project proposed to be conveyed to
EDGE in a PILOT Agreement and Lease Agreement.

Company Name: __________________________________________________________
Mailing Address: __________________________________________________________
City: __________________ State: __________ Zip: __________
Telephone: __________________ Fax: __________________
Federal Employer Identification Number: ______________________________________

Company Representative/Contact for this PILOT Application:
Name: ________________________________________________________________
Title: __________________________________________________________________
Mailing Address: (if different than company address) __________________________
City: __________________ State: __________ Zip: __________
Telephone: __________________ Fax: __________________
E-mail address: __________________________________________________________

Description of Principal Business: ____________________________________________
Legal Structure: __________ If corporation, state where incorporated: __________

If foreign corporation, is it registered to do business in Tennessee?  
☐ Yes  ☐ No

2. Sponsor (if applicable)—In a three-party PILOT transaction, the Sponsor is usually the fee owner of the
real property upon which the Project will be located:

Company Name: __________________________________________________________
Mailing Address: __________________________________________________________
City: __________________ State: __________ Zip: __________
Telephone: __________________ Fax: __________________
Federal Employer Identification Number: ______________________________________

Company Representative/Contact:
Name: ________________________________________________________________
Title: __________________________________________________________________
Mailing Address: (if different than company address) __________________________
City: __________________ State: __________ Zip: __________
Telephone: __________________ Fax: __________________
E-mail address: __________________________________________________________

Description of Principal Business: ____________________________________________
Legal Structure: __________ If corporation, state where incorporated: __________

If foreign corporation, is it registered to do business in Tennessee?  
☐ Yes  ☐ No
3. Name outside professionals who will be involved in the Project on behalf of the Applicant and/or Sponsor.

   Applicant’s Legal Counsel:
   Name: ____________________________________________________________
   Mailing Address: _________________________________________________
   City: ___________________________ State: ___________ Zip: ___________
   Telephone: ______________________ Fax: ____________________________

4. Does Applicant or Sponsor of the Project have an application pending or intend to apply for a PILOT or industrial revenue bond financing for this project with any other board or community?:

   □ Yes   □ No

   A. Has Applicant or Sponsor of the Project obtained payment-in-lieu-of-tax incentive for any project by this Board or any other Board or community in Tennessee? If yes, please list projects and communities:

   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

5. Project Location:
   A. Street Address: ________________________________________________
   B. Vicinity Map – please attach with general location of site shown.
   C. Location Detail – please attach site information from the Shelby County Assessor’s website showing the parcel(s) involved, their parcel numbers and other details.
   D. Current owner of the real property: ________________________________
   E. If not already owned by Applicant, does the Applicant have an option to purchase the property?

   □ Yes   □ No
   F. Are there presently outstanding any options or liens with regard to the property?

   □ Yes   □ No
   If yes, list:

   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

6. Project Summary – describe the proposed project, including the company (i.e., corporate structure, products/NAICS codes, history, locations), the activities to be performed at the PILOT location, the facilities to be constructed/purchased/leased for the Project (if any), the personal property to be utilized for the Project (if any), other locations under consideration for this Project, and the need for assistance through the PILOT program.
Tax Information of Project Location if real property benefit is being sought: (Attach a copy of the latest property tax record from Shelby County Assessor’s Office on the real property Project location).
www.assessor.shelby.tn.us

Tax Parcel ID number or numbers: 

Current Assessed Value: 

Current Annual Tax: 

7. If any part of this Project involves the relocation/movement of existing Shelby County operations from one location to another, please provide the following:

<table>
<thead>
<tr>
<th></th>
<th>Moving From</th>
<th>Moving To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parcel ID Number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Square Feet Owned/Leased</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number Employees</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please describe the relocation/expansion including which operations will be relocating, when they will be relocating and the type and extent of the expansion.
8. Capital Investment:

### New Capital Expenditure - Real Property

<table>
<thead>
<tr>
<th>Category</th>
<th>Square Feet</th>
<th>Capital Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Site Preparation &amp; Off-Site Improvements</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>New Construction – Hard Costs</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Renovation of Existing Structure – Hard Costs</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Soft Costs</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

### New Capital Expenditure – Personal Property¹

<table>
<thead>
<tr>
<th>Group</th>
<th>Capital Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – Furniture, Fixtures, General Equipment &amp; All Other Property Not Listed in Another Group</td>
<td>$</td>
</tr>
<tr>
<td>2 – Computers, Copiers, Fax Machines, Peripherals &amp; Tools</td>
<td>$</td>
</tr>
<tr>
<td>3 – Molds, Dies &amp; Jigs</td>
<td>$</td>
</tr>
<tr>
<td>4 – Aircraft¹, Towers &amp; Boats²</td>
<td>$</td>
</tr>
<tr>
<td>5 – Manufacturing Machinery</td>
<td>$</td>
</tr>
<tr>
<td>6 – Billboards, Tanks &amp; Pipelines</td>
<td>$</td>
</tr>
<tr>
<td>7 – Scrap Property¹</td>
<td>$</td>
</tr>
<tr>
<td>8 – Raw Material² &amp; Supplies²</td>
<td>$</td>
</tr>
<tr>
<td>9 – Vehicles²</td>
<td>$</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$</td>
</tr>
</tbody>
</table>

### Personal Property Moved to Project Site from Outside of Shelby County

<table>
<thead>
<tr>
<th>Group</th>
<th>Depreciated Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – Furniture, Fixtures, General Equipment &amp; All Other Property Not Listed in Another Group</td>
<td>$</td>
</tr>
<tr>
<td>2 – Computers, Copiers, Fax Machines, Peripherals &amp; Tools</td>
<td>$</td>
</tr>
<tr>
<td>3 – Molds, Dies &amp; Jigs</td>
<td>$</td>
</tr>
<tr>
<td>4 – Aircraft¹, Towers &amp; Boats²</td>
<td>$</td>
</tr>
<tr>
<td>5 – Manufacturing Machinery</td>
<td>$</td>
</tr>
<tr>
<td>6 – Billboards, Tanks &amp; Pipelines</td>
<td>$</td>
</tr>
<tr>
<td>7 – Scrap Property¹</td>
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<td>$</td>
</tr>
<tr>
<td>9 – Vehicles²</td>
<td>$</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$</td>
</tr>
</tbody>
</table>

Notes:

1. For more information see the Shelby County Assessor of Property’s website.
2. Not eligible for inclusion in the EDGE PILOT Program.
9. Project Construction:

A. Current zoning of Project Location: 
   Required Zoning: 

B. Describe any off-site and/or publicly owned infrastructure requirements:
   Water: 
   Sanitary Sewer: 
   Streets: 
   Storm Sewer: 
   Other: 
PROJECT EMPLOYMENT

*Please complete Section 11.* In determining the number of jobs for this Project, please use the following definitions:

**Average Annual Basis** – If employment varies during the year calculate the annual average number of jobs based upon summing the total number of jobs employed by the Project on the first day of each calendar month during the calendar year then dividing by 12.

**Full-time Job** – Any job position that provides employment of 1,600 hours or more within a year that is employed directly by the Applicant or employed by a contract employer on behalf of the Applicant.

**Full-Time Equivalent (FTE)** – A combination of permanent job positions that together provide 1,600 or more hours of employment within a year. For example, two jobs that provide 800 hours of employment each equal one Full-Time Equivalent Job.

**Annual Wage** – The total annual pay for a job position including budgeted, regularly occurring paid overtime, paid vacation, and paid holidays.

**PILOT Job Eligibility Notes:**

**Benefits** – Generally, non-wage compensation provided to Project employees in addition to their normal wages or salaries, must include at a minimum medical benefits where the employer pays at least 50% of the cost of the medical insurance premium for those jobs to be considered as a PILOT Project job in determining PILOT eligibility and compliance.

**Wages** – Generally, the wage received by an employee or Contract Employee must be at least $10 per hour for that job to be considered as a PILOT Project job in determining PILOT eligibility and compliance.

**Jobs** – New jobs must be employed within the Ramp Up Period of the PILOT, customarily two (2) years. If jobs created beyond the Ramp Up Period are to be considered, additional copies of Section 11 must be submitted showing the annual average basis jobs for each additional year of ramp up.

These terms and definitions are subject to any qualifications and exceptions set forth in the EDGE PILOT Program Policies and Procedures.
### 11. PROJECT EMPLOYMENT

<table>
<thead>
<tr>
<th>Position</th>
<th># of Workers</th>
<th>Average Annual Base Pay*</th>
<th>Annual Overtime/Incentive Pay</th>
<th>Annual Benefits**</th>
<th>Annual Total Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Each</td>
<td>Total</td>
<td>Each</td>
<td>Total</td>
<td>Each</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Includes paid overtime, paid holidays and vacation pay. Does not include discretionary bonus or stock options.

**Includes health insurance, dental insurance, 401K plans, paid sick leave, bonus compensation, etc.
12. CURRENT EMPLOYMENT – if applicable (expansions/relocations within Shelby County)

<table>
<thead>
<tr>
<th>Position</th>
<th># of Workers</th>
<th>Average Annual Base Pay*</th>
<th>Annual Overtime/Incentive Pay</th>
<th>Annual Benefits**</th>
<th>Annual Total Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Each</td>
<td>Total</td>
<td>Each</td>
<td>Each</td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td>Each</td>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Includes paid overtime, paid holidays, and vacation pay. Does not include discretionary bonus or stock options.

**Includes health insurance, dental insurance, 401K plans, paid sick leave, bonus compensation, etc.
13. Discuss any environmental impacts created by the Project (attach a Phase I Environmental Audit addressed to EDGE, if a Real Property PILOT benefit is being sought):

__________________________________________________________________________

__________________________________________________________________________

14. If the Applicant is seeking a Green Initiative Special Incentive, please attach LEED or other authorized Certificate or Environmental Commitment Plan.

15. Need for the PILOT - For Basic PILOT applicants, please provide a statement (1) demonstrating that the PILOT sought is an important component of an overall plan to achieve the subject economic development/project, and (2) reflecting the competitive nature and advantages of other markets under consideration, if applicable. For Retention PILOT Applicant, please provide a statement (1) demonstrating that its local operations are at substantial risk of suffering a significant decline in local employment without the Retention PILOT and the associated capital expenditure, and (2) reflecting the competitive nature and advantages of other markets under consideration, if applicable.

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

16. Financial Information – Attach copies of the audited financial statements for the most recent three fiscal years. If a publicly-held corporation, also attach the latest annual report. If a privately-held company, also attach a certified statement of the corporation’s net worth with corresponding disclosure notes as provided in the Applicant’s latest approved or audited financial statement.

17. Attach documentation demonstrating compliance with and payment of all municipal, county, state, and federal taxes due for all properties owned by the Applicant located within Shelby County.

17. Attach a Diversity Plan as outlined in the EDGE PILOT Program Policies and Procedures.

17. Attach certification demonstrating Applicant’s compliance with the Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000d), as amended.

18. If the Applicant is seeking a Prisoner Work Release and Reentry Special Incentive, please attach a Participation Agreement with one of the Prisoner Work Release and/or Reentry Programs listed in the PILOT Program Overview.

This Application is made in order to induce EDGE to grant financial incentives to Applicant and Sponsor. Applicant and Sponsor represent and warrant that the statements contained herein or attached hereto are true and correct to the best of their knowledge and include all information materially significant to EDGE in its consideration of this Application.

Applicant and Sponsor have read and agree to comply with all requirements of the EDGE PILOT Program Policies and Procedures. Applicant specifically agrees to pay all reasonable costs, fees, and expenses incurred by EDGE in connection with this Application, whether or not the financial incentives are granted or the Project is consummated.
SECTION XVIII
THE EDGE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
PAYMENT-IN-LIEU-OF-TAX (PILOT) PROGRAM

PILOT PERFORMANCE REPORT
This form is to be completed even if the project is still in the "Ramp-Up Period"

Please complete the following contact information:

Company Name: ________________________________

Local Contact: ________________________________

Title: ________________________________

Local Address: ________________________________

Local Phone: ________________________________

Local Fax: ________________________________

Email: ________________________________

Person Responsible for completing Report (If different from the local contact)

Name: ________________________________

Title: ________________________________

Address: ________________________________

Phone: ________________________________

Fax: ________________________________

Email: ________________________________

Submission Deadline: January 31 (PILOTs granted after 2003)
March 1 (PILOTs granted before 2003)
PILOT PERFORMANCE REPORT
Totals as of December 31

Project Data:
• PILOT Recipient (Company Name): ____________________________
• Address of Property Subject to PILOT: __________________________
• Original Lease Execution Date: ___________  • Ramp-Up Period: ___________
• Number of years tax abatement granted by EDGE/IDB: ________

PILOT Payments: (Note 1)¹

<table>
<thead>
<tr>
<th>Year</th>
<th>Prior Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>City</td>
</tr>
<tr>
<td>Real Property</td>
<td>$</td>
</tr>
<tr>
<td>Personal Property</td>
<td>$</td>
</tr>
</tbody>
</table>

Capital Investment: (Note 2)²

Please indicate the cumulative total PILOT project investment as of December 31 and the amounts committed per the applicable lease(s). Kindly include tenant improvements under the Real Property category.

<table>
<thead>
<tr>
<th>Project-Related Investment</th>
<th>Real Property</th>
<th>Personal Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Achievement</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Commitment</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

¹ (Note 1) Total PILOT payments made that would correspond to payments due per the lease agreement(s).

² (Note 2) For clarification purposes, the achieved amounts quoted for the year ended 2012 should include total investments since inception of the PILOT, through the ramp-up period; less any disposals plus any additions or replacements in accordance with the terms of the lease agreement. In addition, the amounts quoted as invested in real and personal property should be the actual expenditures (amounts spent) on the asset type, and not on an assessed value determined by the Shelby County Assessor’s office, or any other entity. Personal property amounts should represent Bills of Sale executed with EDGE/IDB as well as additional project expenditure not yet captured under a bill of sale.
**PILOT PERFORMANCE REPORT**
Totals as of December 31

**Tangible Personal Property: (Note 3)**

<table>
<thead>
<tr>
<th></th>
<th>Bill(s) of sale No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Replacements</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Disposals</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>☐ Net</td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

Also, please attach personal property depreciation schedules for all tangible personal property that is a subject of the PILOT.

**Job Creation & Wages:**
In the box below (and on additional space if needed), please indicate the job creation and wage information totals as they relate to the PILOT commitments. Also indicate the total on-site employment as of December 31.

<table>
<thead>
<tr>
<th>Position (Job Classification or Title)</th>
<th>Number of Employees (full time) (Note 4)</th>
<th>Annual Wage (Note 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Without Benefits</td>
</tr>
<tr>
<td></td>
<td></td>
<td>With Benefits</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total:</td>
<td>Median/Average Wage:</td>
<td></td>
</tr>
</tbody>
</table>

**Total on Site Employment _______
Job Creation Commitment _______

---

3 (Note 3) Please note any replacements/disposals of personal property and the corresponding bills of sale generated due to replacement or disposals of the personal property assets during the year (Please indicate ☐ if one bill of sale reflects both additions and disposals and utilize the "Net" row)

4 (Note 4) In addition to the jobs created and maintained information as described above; in the event that your company utilized contract labor provided by a vendor, please attach vendor reports as necessary. Utilize the attached Vendor Report form. Forms should be sent to vendors, returned to you and included with your submission.

5 (Note 5) Refer to your PILOT Lease Agreement and/or other supporting documents and determine the exact commitment as to whether it is median wage or average wage. Cross out the incorrect type and present the achieved wage, i.e. average or median wage. In addition, determine if the indicated commitment is "with", or "without" benefits and utilize the correct column for reporting the amounts, i.e. use the correct column "with" benefits, or "without", it is not necessary to use both.
PILOT PERFORMANCE REPORT
Totals as of December 31

To the best of my knowledge and belief, I certify the following:

- That the information and attachments provided are true and accurate, and except as noted on the previous page(s) or other attachments to this document;

__________ (company name) _________ has complied with all major criteria/components related to PILOT # ________________.

Print Name and Title of Authorized Company Representative

_________________________________________ Date
Signature

_________________________________________ Email
Phone

Before me, a Notary of the State of Tennessee and county of Shelby, personally

__________ (name) _________ who acknowledges that he/she is the _________ (title) _________ of ___________ (company name) _________ and as such _________ (name) _________ executed the foregoing instrument for the purposes therein by signing his name and indicating himself/herself as _________ (title) _________.

WITNESS my hand and Notarial Seal, this the _____ day of _________ 201___.

Notary Signature: _________________________

My commission expires: _________________________

Please submit completed and signed materials to: EDGE/IDB, Attn: Trey Heath; theath@growth-engine.org and Memphis Consulting Group, LLC; Attn: Jonathan Nyaku; nyaku@memphisconsultinggroup.com; copied to roser@memphisconsultinggroup.com

For assistance call: 901-791-4643

Deadline: January 31 (PILOTs granted after 2003)
March 1 (PILOTs granted before 2003)
Exhibit F
ANNUAL REPORT FORM
THE EDGE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
PAYMENT-IN-LIEU-OF-TAX (PILOT) PROGRAM

PILOT PERFORMANCE REPORT
This form is to be completed even if the project is still in the “Ramp-Up Period”

Please complete the following contact information:

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Local Contact: ________________________________

Title: _________________________________

Local Address: __________________________________________

Local Phone: ________________________________

Local Fax: _____________________________

Email: _______________________________________

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Phone: _______________________________________

Fax: _______________________________________

Email: _______________________________________

Submission Deadline: January 31 (PILOTs granted after 2003)
March 1 (PILOTs granted before 2003)
PILOT PERFORMANCE REPORT
Totals as of December 31

Project Data:
• PILOT Recipient (Company Name):
• Address of Property Subject to PILOT:
• Original Lease Execution Date: Ramp-Up Period:
• Number of years tax abatement granted by EDGE/IDB:

PILOT Payments: (Note 1)

<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>City</td>
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</tr>
<tr>
<td>Real Property</td>
<td>$</td>
<td>$</td>
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<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

Capital Investment: (Note 2)

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<tbody>
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<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

1 (Note 1) Total PILOT payments made that would correspond to payments due per the lease agreement(s).

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PILOT PERFORMANCE REPORT  
Totals as of December 31

**Tangible Personal Property:** (Note 3)³

<table>
<thead>
<tr>
<th></th>
<th>Bill(s) of sale No.</th>
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</thead>
<tbody>
<tr>
<td>Replacements</td>
<td></td>
<td>$</td>
</tr>
<tr>
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<td>$</td>
</tr>
</tbody>
</table>

Also, please attach personal property depreciation schedules for all tangible personal property that is a subject of the PILOT.

**Job Creation & Wages:**

In the box below (and on additional space if needed), please indicate the job creation and wage information totals as they relate to the PILOT commitments. Also indicate the total on-site employment as of December 31.

<table>
<thead>
<tr>
<th>Position (Job Classification or Title)</th>
<th>Number of Employees (full time) (Note 4)⁴</th>
<th>Annual Wage (Note 5)⁵</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Without Benefits</td>
</tr>
<tr>
<td></td>
<td></td>
<td>With Benefits</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Median/Average Wage:</td>
</tr>
</tbody>
</table>

**Total on Site Employment** ______

**Job Creation Commitment** ______

³ (Note 3) Please note any replacements/disposals of personal property and the corresponding bills of sale generated due to replacement or disposals of the personal property assets during the year (Please indicate (□) if one bill of sale reflects both additions and disposals and utilize the “Net” row).

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⁵ (Note 5) Refer to your PILOT Lease Agreement and/or other supporting documents and determine the exact commitment as to whether it is median wage or average wage. Cross out the incorrect type and present the achieved wage, i.e. average or median wage. In addition, determine if the indicated commitment is “with”, or “without” benefits and utilize the correct column for reporting the amounts, i.e. use the correct column “with” benefits, or “without”, it is not necessary to use both.
PILOT PERFORMANCE REPORT
Totals as of December 31

To the best of my knowledge and belief, I certify the following:

- That the information and attachments provided are true and accurate, and
  except as noted on the previous page(s) or other attachments to this document;

  (company name) has complied with all major criteria/components
  related to PILOT #

Print Name and Title of Authorized Company Representative

______________________________
Signature

______________________________
Date

______________________________
Phone

______________________________
Email

Before me, a Notary of the State of Tennessee and county of Shelby, personally
(name) who acknowledges that he/she is the (title) of
(company name) and as such (name) executed the
foregoing instrument for the purposes therein by signing his name and indicating himself/herself
as (title)

WITNESS my hand and Notarial Seal, this the ___ day of ________ 201_

Notary Signature:

My commission expires:

Please submit completed and signed materials to: EDGE/IDB, Attn: Trey Heath; theath@growth-engine.org and Memphis Consulting Group, LLC; Attn: Jonathan Nyaku; nyaku@memphisconsultinggroup.com; copied to roser@memphisconsultinggroup.com

For assistance call: 901-791-4643

Deadline: January 31 (PILOTs granted after 2003)
March 1 (PILOTs granted before 2003)
Exhibit G
DIVERSITY PLAN
Memo

To: Economic Development Growth Engine Of Memphis & Shelby County, Board Of Directors

From: M. Hooks, Jr. (AWPM), Interim EDGE Diversity Consultant

CC: Willie Gregory (NIKE), Pete Brightwell (NIKE), Al Cousins (AWPM), Keith Dillihunt (EDGE)

Date: 5/9/13

Re: NIKE TN, INC Diversity Plan Approval

AWPM recommends approval of NIKE TN, INC (NIKE) diversity plan as attached. Summary of consultant activities and diversity plan:

Michael A. Hooks, Jr. & Al Cousins participated in an initial phone conference on October 23rd, 2012 and provided an overview of the EDGE Diversity Program with NIKE representatives and their legal counsel. At this time, construction plans and specifications were not complete and NIKE representatives agreed to follow up as the details were developed.

There were additional conference calls on initiated by NIKE on 12/18/2012 and 1/3/13 to report status and provide project updates. On 1/7/13 Al Cousins and Michael A. Hooks, Jr. met with NIKE representatives and H & M Company representatives (General Contractor) at the NIKE distribution center to receive an overview of the construction plans and delivery methodology. H&M Company along with NIKE Construction Project Manager, Pete Brightwell detailed the bidding process (design bid build) to be performed in all phases of construction. All parties expressed the commitment to meet Good Faith Efforts and described action items that include MWBE & LOSB firms in the initial phases and throughout the process.

NIKE representatives have agreed to maintain contact with the Diversity Consultant and resource partners including, but not limited to the Memphis Area Chamber Of Commerce, Midsouth Minority Business Council & the Memphis Office of Resources & Enterprises in an effort to notify firms of upcoming activities. Towards that effort, NIKE conducted a construction symposium on 2/7/2013 with the General Contractor and Potential Sub Contractors for this project. Over 80 firms attended these meetings.

Contracting:

NIKE and consultants conferenced several times by phone (4/15, 4/29 and 5/6) to assess and develop a diversity plan for goods and services. As attached, NIKE has agreed to meet good faith efforts in reaching at minimum 25 percent of total project spending with LOSB and MWBE businesses.

Hiring:

As attached, NIKE has agreed to meet the requirements of the EDGE diversity policy related to hiring.
<table>
<thead>
<tr>
<th>Applicable Spending for Memphis Participation</th>
<th>Project Total Estimated Spend</th>
<th>Project Total M/WBE &amp; LOSB Estimated Spend</th>
<th>Project Total M/WBE &amp; LOSB %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction/TI</td>
<td>$57,629,476</td>
<td>$58,309,548</td>
<td>66.5%</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$9,800,000</td>
<td>$9,800,000</td>
<td>0.0%</td>
</tr>
<tr>
<td>Goods</td>
<td>$30,000,000</td>
<td>$13,500,000</td>
<td>44.9%</td>
</tr>
<tr>
<td>Non-Professional Services</td>
<td>$27,000,000</td>
<td>$8,041,161</td>
<td>28.8%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$124,229,476</strong></td>
<td><strong>$89,850,709</strong></td>
<td><strong>47.2%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>CY 2013 Estimated Spend</th>
<th>CY 2013 M/WBE &amp; LOSB Estimated Spend</th>
<th>CY 2013 M/WBE &amp; LOSB %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction/TI</td>
<td>$37,850,000</td>
<td>$20,209,548</td>
<td>53.4%</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$5,600,000</td>
<td>$6,000,000</td>
<td>0.9%</td>
</tr>
<tr>
<td>Goods</td>
<td>$19,400,000</td>
<td>$6,000,000</td>
<td>30.3%</td>
</tr>
<tr>
<td>Non-Professional Services</td>
<td>$6,500,000</td>
<td>$2,680,387</td>
<td>41.2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$73,750,000</strong></td>
<td><strong>$28,889,935</strong></td>
<td><strong>39.2%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>CY 2014 Estimated Spend</th>
<th>CY 2014 M/WBE &amp; LOSB Estimated Spend</th>
<th>CY 2014 M/WBE &amp; LOSB %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction/TI</td>
<td>$18,779,476</td>
<td>$18,100,000</td>
<td>91.5%</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$0</td>
<td>$0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Goods</td>
<td>$10,200,000</td>
<td>$7,500,000</td>
<td>73.5%</td>
</tr>
<tr>
<td>Non-Professional Services</td>
<td>$6,500,000</td>
<td>$2,680,387</td>
<td>41.2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$36,479,476</strong></td>
<td><strong>$28,280,387</strong></td>
<td><strong>77.5%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>CY 2015 Estimated Spend</th>
<th>CY 2015 M/WBE &amp; LOSB Estimated Spend</th>
<th>CY 2015 M/WBE &amp; LOSB %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction/TI</td>
<td>$0</td>
<td>$0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$0</td>
<td>$0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Goods</td>
<td>$0</td>
<td>$2,680,387</td>
<td>19.1%</td>
</tr>
<tr>
<td>Non-Professional Services</td>
<td>$14,000,000</td>
<td>$2,680,387</td>
<td>19.1%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$14,000,000</strong></td>
<td><strong>$2,680,387</strong></td>
<td><strong>19.1%</strong></td>
</tr>
</tbody>
</table>

Construction/TI: includes 30 year life activities, foundation, structure improvements  
Professional Services: includes consulting and independent contractors  
Goods: 15 months - 3 year M/WBE and Systems Infrastructure  
Non-Professional Services: operational support for the building.
Exhibit H
BENEFIT TO COST ANALYSIS
<table>
<thead>
<tr>
<th><strong>Company/Applicant:</strong></th>
<th>Project Victory - Northridge Retention/Expansion</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capital Investment:</strong></td>
<td>$ 301,000,000</td>
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<tr>
<td><strong>Jobs:</strong> (Retained and New)</td>
<td>1,912</td>
</tr>
<tr>
<td><strong>Annual Average Wage:</strong></td>
<td>$ 35,000</td>
</tr>
<tr>
<td><strong>Recommended PILOT Length:</strong> (Years)</td>
<td>15</td>
</tr>
<tr>
<td><strong>Tax Incentive:</strong></td>
<td>$ 57,828,256</td>
</tr>
<tr>
<td><strong>Local Tax Benefit:</strong></td>
<td>$ 105,308,761</td>
</tr>
<tr>
<td><strong>Benefit/Cost Ratio:</strong></td>
<td>1.82</td>
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City of Memphis, Shelby County, TN  
Project Victory - Northridge Retention/Expansion  
Tax Incentive Eligibility Analysis

<table>
<thead>
<tr>
<th>Category</th>
<th>Project Data</th>
<th>Points</th>
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<tr>
<td>Job Retention (1,662 Retained)</td>
<td>1662</td>
<td>166.2</td>
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<tr>
<td>News Jobs Created (250 New)</td>
<td>250</td>
<td>30.0</td>
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<tr>
<td>Wages*</td>
<td>$35,000</td>
<td>0.0</td>
</tr>
<tr>
<td>Capital Investment</td>
<td>$301,000,000</td>
<td>301.0</td>
</tr>
<tr>
<td>CRC</td>
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<td>0.0</td>
</tr>
<tr>
<td>Location</td>
<td>City of Memphis</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>507</td>
</tr>
<tr>
<td>Special Circumstances (Not to exceed 25% of Total)</td>
<td>127</td>
<td>15</td>
</tr>
<tr>
<td>Grand Total</td>
<td></td>
<td>522</td>
</tr>
</tbody>
</table>

Length of tax incentive: 15

*Wages Calculation

Shelby County Annual Average Wage $ 51,267
Target Wages - 75% of Annual Wage $ 38,450
Project Wages $ 35,000
Project wages as a % of Target Wage 91

Meets Target of 100% of Annual Average Wage -
Extra Points -
Total Points -

Special Circumstances: Points
Targeted Industry (logistics/distribution) 5
Headquarters 0
Fortune 500/Industry Leader 5
Major Employer 5
Minority/Women-Owned Business 0
Benefit to Cost Ratio Bonus 0
Total 15

October 12, 2012
### City of Memphis, Shelby County, TN
#### Project Victory - Northridge
#### Economic Impact and Benefit/Cost Analysis

<table>
<thead>
<tr>
<th>Annual Impact of Operations</th>
<th>Operation</th>
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</thead>
<tbody>
<tr>
<td>Employment, Direct (New full-time equivalent jobs)</td>
<td>1,912</td>
</tr>
<tr>
<td>Wages &amp; Benefits, Direct</td>
<td>80,304,000</td>
</tr>
<tr>
<td>Employment Multiplier (^1)</td>
<td>1.9564</td>
</tr>
<tr>
<td>Total Employment</td>
<td>3,741</td>
</tr>
<tr>
<td>Employment, Indirect</td>
<td>1,829</td>
</tr>
<tr>
<td>Shelby County Annual Average Wage (^2)</td>
<td>$ 51,267</td>
</tr>
<tr>
<td>Wages, Indirect</td>
<td>$ 93,767,343</td>
</tr>
<tr>
<td>Total Wages</td>
<td>$ 174,071,343</td>
</tr>
<tr>
<td>Sales Tax Revenue (^3)</td>
<td>$ 1,966,136</td>
</tr>
<tr>
<td>Other Tax Revenue (^4)</td>
<td>$ 566,247</td>
</tr>
<tr>
<td>Residential/Commercial Property Tax Revenue (^5)</td>
<td>$ 3,364,718</td>
</tr>
<tr>
<td>Total Tax Revenue</td>
<td>$ 5,897,101</td>
</tr>
</tbody>
</table>
City of Memphis, Shelby County, TN  
Project Victory - Northridge Retention/Expansion  
Economic Impact and Benefit/Cost Analysis

<table>
<thead>
<tr>
<th>One Time Expansion Impact</th>
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</thead>
<tbody>
<tr>
<td>Total Capital Investment</td>
<td>$298,000,000</td>
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<tr>
<td>Building - Real Property (building &amp; fees)</td>
<td>$164,000,000</td>
</tr>
<tr>
<td>Economic Impact Multiplier 6</td>
<td>1.9805</td>
</tr>
<tr>
<td>Economic Impact</td>
<td>$324,802,000</td>
</tr>
<tr>
<td>Equipment Purchase/Set-up - Personal Property</td>
<td>$134,000,000</td>
</tr>
<tr>
<td>Economic Impact Multiplier 7</td>
<td>1.7302</td>
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<tr>
<td>Economic Impact</td>
<td>$231,846,800</td>
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<tr>
<td>Total Economic Impact</td>
<td>$556,648,800</td>
</tr>
<tr>
<td>Sales Tax Revenue 3</td>
<td>$2,921,438</td>
</tr>
<tr>
<td>Other Tax Revenue 4</td>
<td>$841,374</td>
</tr>
<tr>
<td>Total Tax Revenue</td>
<td>$3,762,812</td>
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</table>
### Project Victory - Northridge Retention/Expansion
#### Shelby County Tax Schedule

<table>
<thead>
<tr>
<th>Shelby County Tax Rate: $4.02</th>
<th>Real Property (Building Only)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Value</strong></td>
<td>$131,000,000</td>
</tr>
<tr>
<td><strong>Year 1</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 2</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 3</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 4</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 5</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 6</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 7</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 8</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 9</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 10</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 11</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 12</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 13</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 14</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Year 15</strong></td>
<td>$2,106,480,25% $526,620 $1,579,860</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$31,597,200 $7,899,300 $23,697,900</td>
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</table>
## Project Victory - Northridge Retention/Expansion
### City of Memphis Tax Schedule

<table>
<thead>
<tr>
<th>City of Memphis Tax Rate: $3.11</th>
<th>Real Property (Building Only)</th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Full Taxes</td>
<td>% of taxes paid</td>
<td>Taxes Paid after Abatement</td>
<td>Taxes Abated</td>
</tr>
<tr>
<td><strong>Value</strong></td>
<td>$131,000,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year 1</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 2</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 3</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 4</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 5</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 6</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 7</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 8</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 9</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 10</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 11</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 12</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 13</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 14</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td>Year 15</td>
<td>$1,629,640</td>
<td>10%</td>
<td>$162,964</td>
<td>$1,466,676</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$24,444,600</td>
<td></td>
<td>$2,444,460</td>
<td>$22,000,140</td>
</tr>
</tbody>
</table>

- **Total Real Property Taxes Abated:** $45,698,040
- **Payments Made in Lieu of Taxes:** $10,343,760

*Does not include site prep.*
# Project Victory - Northridge Retention/Expansion

## Shelby County Tax Schedule

<table>
<thead>
<tr>
<th>Shelby County Tax Rate: $4.02</th>
<th>Personal Property</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>Full Taxes</td>
<td>Depreciation Rate</td>
<td>% of taxes paid</td>
<td>Taxes Paid after Abatement</td>
<td>Taxes Abated</td>
</tr>
<tr>
<td>$134,000,000</td>
<td>$1,422,115</td>
<td>0.88</td>
<td>25%</td>
<td>$355,529</td>
<td>$1,066,586</td>
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<td></td>
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<td></td>
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</tr>
<tr>
<td>$1,212,030</td>
<td>0.75</td>
<td>25%</td>
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<td></td>
<td>$909,022</td>
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<tr>
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<td></td>
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<tr>
<td>$1,018,105</td>
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<td>25%</td>
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<td>$303,007</td>
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<tr>
<td>Year 6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$323,208</td>
<td>0.20</td>
<td>25%</td>
<td>$80,802</td>
<td></td>
<td>$242,406</td>
</tr>
<tr>
<td>Year 7</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>$323,208</td>
<td>0.20</td>
<td>25%</td>
<td>$80,802</td>
<td></td>
<td>$242,406</td>
</tr>
<tr>
<td>Year 8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$323,208</td>
<td>0.20</td>
<td>25%</td>
<td>$80,802</td>
<td></td>
<td>$242,406</td>
</tr>
<tr>
<td>Year 9</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>$323,208</td>
<td>0.20</td>
<td>25%</td>
<td>$80,802</td>
<td></td>
<td>$242,406</td>
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<tr>
<td>Year 10</td>
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<td></td>
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</tr>
<tr>
<td>$323,208</td>
<td>0.20</td>
<td>25%</td>
<td>$80,802</td>
<td></td>
<td>$242,406</td>
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<tr>
<td>Year 11</td>
<td></td>
<td></td>
<td></td>
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</tr>
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<td>0.20</td>
<td>25%</td>
<td>$80,802</td>
<td></td>
<td>$242,406</td>
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<tr>
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<td></td>
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<td>0.20</td>
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<td>$80,802</td>
<td></td>
<td>$242,406</td>
</tr>
<tr>
<td>Year 13</td>
<td></td>
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</tr>
<tr>
<td>$323,208</td>
<td>0.20</td>
<td>25%</td>
<td>$80,802</td>
<td></td>
<td>$242,406</td>
</tr>
<tr>
<td>Year 14</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td>0.20</td>
<td>25%</td>
<td>$80,802</td>
<td></td>
<td>$242,406</td>
</tr>
<tr>
<td>Year 15</td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td>0.20</td>
<td>25%</td>
<td>$80,802</td>
<td></td>
<td>$242,406</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$8,387,247</strong></td>
<td></td>
<td><strong>$2,096,813</strong></td>
<td></td>
<td><strong>$6,290,434</strong></td>
</tr>
</tbody>
</table>
## Project Victory - Northridge Retention/Expansion
### City of Memphis Tax Schedule

<table>
<thead>
<tr>
<th></th>
<th>Full Taxes</th>
<th>Depreciation Rate</th>
<th>% of taxes paid</th>
<th>Taxes Paid after Abatement</th>
<th>Taxes Abated</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Value</strong></td>
<td>$134,000,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year 1</td>
<td>$1,100,194</td>
<td>0.88</td>
<td>10%</td>
<td>$110,019</td>
<td>$990,175</td>
</tr>
<tr>
<td>Year 2</td>
<td>$937,665</td>
<td>0.75</td>
<td>10%</td>
<td>$93,767</td>
<td>$843,898</td>
</tr>
<tr>
<td>Year 3</td>
<td>$787,639</td>
<td>0.63</td>
<td>10%</td>
<td>$78,764</td>
<td>$708,875</td>
</tr>
<tr>
<td>Year 4</td>
<td>$625,110</td>
<td>0.50</td>
<td>10%</td>
<td>$62,511</td>
<td>$562,599</td>
</tr>
<tr>
<td>Year 5</td>
<td>$475,084</td>
<td>0.38</td>
<td>10%</td>
<td>$47,508</td>
<td>$427,576</td>
</tr>
<tr>
<td>Year 6</td>
<td>$312,555</td>
<td>0.25</td>
<td>10%</td>
<td>$31,256</td>
<td>$281,299</td>
</tr>
<tr>
<td>Year 7</td>
<td>$250,044</td>
<td>0.20</td>
<td>10%</td>
<td>$25,004</td>
<td>$225,040</td>
</tr>
<tr>
<td>Year 8</td>
<td>$250,044</td>
<td>0.20</td>
<td>10%</td>
<td>$25,004</td>
<td>$225,040</td>
</tr>
<tr>
<td>Year 9</td>
<td>$250,044</td>
<td>0.20</td>
<td>10%</td>
<td>$25,004</td>
<td>$225,040</td>
</tr>
<tr>
<td>Year 10</td>
<td>$250,044</td>
<td>0.20</td>
<td>10%</td>
<td>$25,004</td>
<td>$225,040</td>
</tr>
<tr>
<td>Year 11</td>
<td>$250,044</td>
<td>0.20</td>
<td>10%</td>
<td>$25,004</td>
<td>$225,040</td>
</tr>
<tr>
<td>Year 12</td>
<td>$250,044</td>
<td>0.20</td>
<td>10%</td>
<td>$25,004</td>
<td>$225,040</td>
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<tr>
<td>Year 13</td>
<td>$250,044</td>
<td>0.20</td>
<td>10%</td>
<td>$25,004</td>
<td>$225,040</td>
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<tr>
<td>Year 14</td>
<td>$250,044</td>
<td>0.20</td>
<td>10%</td>
<td>$25,004</td>
<td>$225,040</td>
</tr>
<tr>
<td>Year 15</td>
<td>$250,044</td>
<td>0.20</td>
<td>10%</td>
<td>$25,004</td>
<td>$225,040</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$6,488,643</td>
<td>$648,861</td>
<td>$5,839,782</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Personal Property Taxes Abated:** $12,130,216

**Payments Made in Lieu of Taxes:** $2,745,674
## Payback Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>Value (in $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Length of PILOT (years)</td>
<td>15</td>
</tr>
<tr>
<td>Total Taxes Forgone</td>
<td>57,828,256</td>
</tr>
<tr>
<td>Hard Costs</td>
<td>-</td>
</tr>
<tr>
<td>Total Taxes Forgone and Hard Costs</td>
<td>57,828,256</td>
</tr>
<tr>
<td>Tax Revenues From Construction</td>
<td>3,762,812</td>
</tr>
<tr>
<td>Tax Revenues From Operations During PILOT Period</td>
<td>88,456,515</td>
</tr>
<tr>
<td>Property Tax Revenues Received During PILOT Period</td>
<td>13,089,434</td>
</tr>
<tr>
<td>Total Tax Revenues Received During PILOT Period</td>
<td>105,308,761</td>
</tr>
<tr>
<td>Benefit/Cost Ratio</td>
<td>1.82</td>
</tr>
</tbody>
</table>

### Projected Costs:

**Hard Costs** (land, infrastructure, etc.)
None.

**Opportunity Costs**
Local government is requested to forgo for a period of years the opportunity to collect taxes on site improvement, building, and industrial equipment that are a part of the project.

**Benefit/Cost Ratio:** The sum of tax revenues from construction, operations and property during the PILOT period divided by the total taxes forgone.
## City of Memphis, Shelby County, Tennessee
### Project Victory - Northridge Retention/Expansion

<table>
<thead>
<tr>
<th>Estimated Fees</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Fee (Graduated Scale)</td>
<td>$ 4,000</td>
</tr>
<tr>
<td>Closing Fees (5% of Total Taxes Forgone)</td>
<td>$ 296,000</td>
</tr>
<tr>
<td>(Maximum of $300,000) (Less Application Fee)</td>
<td></td>
</tr>
<tr>
<td>City of Memphis Personal Property Fees for PILOT (5% of Taxes Abated) (Maximum $50,000)</td>
<td>$ 50,000</td>
</tr>
<tr>
<td>Shelby County Personal Property Fees for PILOT (5% of Taxes Abated) (Maximum $50,000)</td>
<td>$ 50,000</td>
</tr>
<tr>
<td><strong>Total Fees</strong></td>
<td><strong>$ 400,000</strong></td>
</tr>
</tbody>
</table>
Exhibit I
VENDOR REPORT FORM
Vendor Report

THIRD-PARTY EMPLOYMENT CERTIFICATE

1. ______________________, hereby certify the following:

1. That I am the ______ of __________________, a ______ corporation ("Employer").

2. Employer has contracted with __________________ ("Company") to provide employees for its location at __________________, Memphis, Shelby County, Tennessee ("Site").

3. The term for the contract between Employer and Company for the Site is from ___________ to ___________.

4. During the calendar year ___________, Employer provided ___________ employees to the Company at the Site with an average wage of ___________ per employee.

This employment certificate is executed on this ___________ day of __________, 20___ for the benefit of the Memphis and Shelby County Industrial Development Board.

___________________________________________________________

By: __________________________

To: __________________________