

ORDINANCE NO. BL2015- 1143

An ordinance authorizing The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County to negotiate and accept payments in lieu of ad valorem taxes with respect to CHS Realty Holdings III, LLC

WHEREAS, The Metropolitan Government of Nashville and Davidson County (hereafter referred to as "Metropolitan Government") is vitally interested in the economic welfare of its citizens and wishes to provide the necessary leadership to enhance this area's capabilities for growth and development; and,

WHEREAS, the provision of jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and,

WHEREAS, pursuant to the Industrial Development Corporations Act, currently codified at Tenn. Code Ann. §§ 7-53-101 through 314 (such act, as heretofore or hereafter amended, the "Act"), the General Assembly of the State of Tennessee (the "General Assembly") has authorized the incorporation of public corporations known as "industrial development boards" in municipalities in the State of Tennessee (the "State"); and,

WHEREAS, The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County (the "Board") has been duly organized and incorporated in compliance with the Act; and,

WHEREAS, the General Assembly has found and declared that the Board is performing a public function on behalf of the Metropolitan Government and that the Board is a public instrumentality of the Metropolitan Government; and,

WHEREAS, the Supreme Court of Tennessee (the "Supreme Court") has found that the Board is an agency or instrumentality of the Metropolitan Government; and,

WHEREAS, the Act expressly incorporates by reference the statement of public policy set forth in Section 3 of Chapter 209 of the Public Acts of 1955; and,

WHEREAS, Chapter 209 of the Public Acts of 1955 states that the declared purpose of the Act is to do that which the State welfare demands and that which the State public policy requires to alleviate the problems of unemployment, to raise family income, to provide a means by which the citizens of the community may promote and develop industry in their area so as to obtain a balanced economic development highly essential to the welfare of the State, and to promote the development of commercial, industrial, agricultural and manufacturing enterprises by the several municipalities so as to be given local benefits peculiar to each and general benefits to the entire State; and,

WHEREAS, the General Assembly also has declared that the purposes of the Act include maintaining and increasing employment opportunities by promoting industry, trade, and commerce by inducing manufacturing, industrial, financial, service, and commercial enterprises to locate or remain in the State; and,

WHEREAS, the Supreme Court has held that the purposes of the Act includes the promotion of industry and the development of trade to provide against low wages and unemployment and that such purposes are public in nature; and,

WHEREAS, the Board is empowered pursuant to the Act to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish, "projects" (as defined in the Act), and to lease such projects to others; and,

WHEREAS, CHS Realty Holdings III, LLC ("CHS Realty"), is planning to construct an office building (the "Office Building") near the intersection of Old Franklin Road and Cane Ridge Road in Antioch; and,

WHEREAS, the Office Building is anticipated to consist of approximately 240,000 square feet, to be completed in 2017 (the Office Building and the land upon which it and possible subsequent phase(s) are to be constructed being the "Project"); and,

WHEREAS, the Project represents an anticipated capital investment of up to \$56,000,000 in real property and in the Office Building over the course of two years; and,

WHEREAS, CHS Realty expects its capital expenditures within the boundaries of the Metropolitan Government to provide significant employment and other commercial opportunities for area citizens; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305, all properties owned by the Board are exempt from ad valorem taxation in the State of Tennessee; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305(b), the Metropolitan County Council (the "Council") has the power to delegate to the Board the authority to negotiate and accept from its lessees payments in lieu of ad valorem taxes, provided that such payments are in furtherance of the Board's public purposes; and,

WHEREAS, the benefits to the Metropolitan Government of the location of the Project within the boundaries of the Metropolitan Government, and in exercise of its powers above, will provide an opportunity for the Board to acquire, by purchase, exchange, gift or lease, property that will be used with respect to the Project, to lease that property to CHS Realty, and to enter into one or more agreements with CHS Realty to accept payments in lieu of *ad valorem* taxes with respect to the property; and,

WHEREAS, the Board may only negotiate and accept payments in lieu of ad valorem taxes with authorization from the Council; and

WHEREAS, it is in the interest and welfare of the citizens of the Metropolitan Government to delegate authority to the Board to negotiate and execute a payment-in-lieu-of-tax agreement with CHS Realty.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: That the Council of the Metropolitan Government finds that the Board's acceptance of payments in lieu of ad valorem taxes with respect to the Project is in furtherance of the Board's public purpose of maintaining and increasing employment opportunities, as set forth in Tenn. Code Ann. § 7-53-102, and the other public purposes described above.

Section 2: That the Metropolitan Government hereby delegates to the Board the authority to negotiate and accept payments in lieu of all real property taxes with respect to the Project for a period beginning on the date that the Board enters into a lease with CHS Realty with respect to the Project and ending on the twelfth (12th) anniversary of the completion of the Project, which is anticipated to occur in 2017. The amount of the payment in lieu of property tax that shall be required with respect to each year under such arrangement shall be as follows: (a) 100% of the Applicable Ad Valorem Taxes from the date of the lease through the day before the completion of the construction of the Project ("Company Occupancy Date"), (b) zero percent (0%) of the Applicable Ad Valorem Taxes from the Company Occupancy Date through December 31, 2019, (c) forty percent (40%) of the Applicable Ad Valorem Taxes from January 1, 2020, through December 31, 2027, (d) seventy-five percent (75%) of the Applicable Ad Valorem Taxes from January 1, 2028, through the twelfth (12th) anniversary of the Company Occupancy Date, and (e) 100% of the Applicable Ad Valorem Taxes thereafter. If any portion of the Office Building is leased or subleased to a Non-Company Entity, then with respect to the period beginning on the Company Occupancy Date and ending on the Twelfth (12th) anniversary of the Company Occupancy Date, the amount of the In Lieu of Tax Payments with respect to the Non-Company Office Building Space shall be one hundred percent (100%) of the Applicable Ad Valorem Taxes for the Non-Company Office Building Space applicable to such period.

On or before January 31 of each calendar year, starting with January 31, 2018, and ending with January 31, 2029, the Company shall provide written notice to the Issuer stating the number of full-time equivalent salaried or hourly employees on a Company Entity's payroll at the Project ("Reported Jobs") as of December 31 of the preceding calendar year (the "Report Date"). A "full-time" position means a position that is filled by an employee who regularly (i.e., 26 weeks or more per 12-month period) works on average 32 or more hours per week for the Company Entity, and employees who reside in Metro and perform some or all of their services for Company Entities from their homes or other off-site locations within Metro will be included in the determination of employment positions if such persons report to Project-based employees or if their work is coordinated, directed or supervised by Project-based employees of a Company Entity. If the number of Reported Jobs in any given year is lower than the "Jobs Target" for that year in the following table (such number being eighty percent (80%) of the number of jobs anticipated to be at the Project at such time), then the Company shall make an additional In Lieu of Tax Payment (the "Additional Payment") for that year in an amount of the Applicable Ad Valorem Taxes proportionate to two times (2X) the amount by which the Jobs Target exceeds the number of Reported Jobs.

<u>Report Date:</u>	<u>Jobs Target:</u>
December 31, 2017 and December 31, 2018	800
December 31, 2019, and December 31, 2020	1000
December 31, 2021, and December 31, 2022	1200

December 31, 2023, and each December 31, thereafter	1600
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Specifically, the Additional Payment shall be the amount determined by (i) subtracting (A) the quotient obtained by dividing the number of Reported Jobs by the Jobs Target from (B) 1, rounded to the nearest percentage point, (ii) multiplied by two (2), and (iii) multiplied by the Applicable Ad Valorem Taxes. By way of example, if the number of Reported Jobs for the December 31, 2021 Report Date is 1,080, the Additional Payment would be 20% of the Applicable Ad Valorem Taxes [$1 - (1080/1200) = 0.10 \times 2 = 20\%$], and the total payment shall be the In Lieu of Tax Payment of 40% of the Applicable In Lieu of Taxes, plus the 20% Additional Payment, which equals 60% of the Applicable Ad Valorem Taxes for that year. In no event shall the Additional Payment plus the In Lieu of Tax Payment exceed 100% of the Applicable Ad Valorem Taxes.

Section 4. That the term "Applicable Ad Valorem Taxes" shall mean the amount of ad valorem real property tax that the that, but for ownership of the Project by the Board, would have been due and payable to the Metropolitan Government with respect to the Project. CHS Realty shall be permitted to challenge the assessment of any real property that is then subject to the payment in lieu of tax arrangement authorized hereby in the same manner as if CHS Realty owned such property.

Section 5. That the term "Non-Company Entity" shall mean an entity that it is not a Company Entity, and the term "Company Entity" shall mean (a) CHS Realty, (b) any successor to CHS Realty, including, without limitation, any corporation, partnership, limited liability company or other entity that (1) acquires, directly or indirectly, a controlling interest in CHS Realty (whether through merger, purchase of stock, partnership interests or other ownership interests, swap of stock, partnership interests or other ownership interests, or otherwise), (2) merges or consolidates with CHS Realty or (3) acquires substantially all of the assets of CHS Realty, (c) any corporation, partnership, limited liability company or other entity that directly or indirectly controls, is controlled by, or is under common control with, any of the foregoing, and/or (d) an entity that is occupying the space primarily to provide outsourced services to another Company Entity.

Section 6. (a) That the payment in lieu of tax arrangement authorized by this Ordinance shall apply to all real property comprising a portion of, or used at or in connection with the Project.

(b) That the payment in lieu of tax arrangement authorized by this Ordinance shall apply to all land, buildings, improvements, fixtures, construction in progress, and other properties of any nature comprising a portion of, or used in connection with, facilities located on the property described above that are treated as real property for ad valorem tax purposes. Such arrangement shall apply to such facilities and such properties in their current scope and configuration and to all replacements, enhancements, additions, expansions, and improvements to such properties and facilities.

Section 7: CHS Realty will produce and manage a diversified business enterprise program to assist small, minority owned, and women owned business enterprises ("DBEs") with respect to their participation in construction at the Project site. Such program will be designed with a DBE participation target of not less than 20% of the Project's hard construction costs and shall be subject to the reasonable approval of, the Metropolitan Government, and will provide for quarterly reporting to the Metropolitan Council and the Minority Caucus of the status of DBE participation in the construction of the Project. The program will include a process to document all (i) good faith efforts

with prospective bidders to reach out to DBE companies, (ii) joint venture or partnership participation by DBE companies, (iii) DBE participation by subcontractors, suppliers or joint ventures proposed by each bidder, (iv) any increases or decreases from an anticipated DBE participation by successful bidders, and (v) the level of payments to DBE's of hard construction costs. Additionally, CHS Realty will utilize the Metropolitan Government's workforce development program with the goal of ensuring that reasonable efforts are made to hire or utilize residents of Davidson County for the construction of the Project.

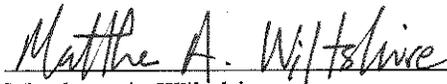
Section 8. That the final version of the payment in lieu of tax agreement authorized by this Ordinance must be approved as to legality by the Department of Law of the Metropolitan Government prior to being executed by the Board.

Section 9. That all ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 10. That this Ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

INTRODUCED BY:



Matthew A. Wiltshire
Director of the Mayor's Office of Economic
and Community Development



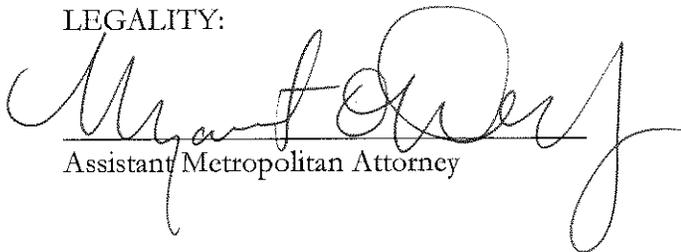
APPROVED AS TO AVAILABILITY OF
FUNDS:



Richard M. Riebeling
Director of Finance

Council Members

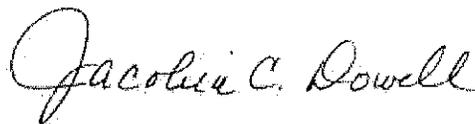
APPROVED AS TO FORM AND
LEGALITY:



Assistant Metropolitan Attorney

Electronic Signature Page

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in cursive script that reads "Jacobia C. Dowell". The signature is written in black ink and is centered on the page.

Jacobia Dowell
Councilwoman, District 32