SHELBY COUNTY BOARD OF COMMISSIONERS
AGENDA ROUTE SHEET

Referred to Commission Committee ECONOMIC DEVELOPMENT

For Commission Action on *JUNE 1, 2009*

RESOLUTION TO APPROVE AN AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE TO NATIONAL CHURCH RESIDENCES OF MEMPHIS (Newberry Heights), a Tennessee not-for-profit corporation, **AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, Tenn. Code Ann.** §67-5-207, et seq., **AT AN AMOUNT OF $5 PER UNIT PER MONTH.**

SPONSORED BY COMMISSIONER JAMES M. HARVEY

CHECK ALL THAT APPLY BELOW:

__Y__ This Action does NOT require expenditure of funds.

_____ This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: $_____ ; County CIP Funds- $_____

State Grant Funds: $_____; State Gas Tax Funds: $_____

Federal Grant Funds: $_____

Other funds (Specify source and amount): $_____

Other pass-thru funds (Specify source and amount): $ _____

Originating Department: County Attorney

APPROVAL:

	(Type your name & phone #.)	(Initials)	(Date)
Dept. Head:			
Elected Official:			
Division Director:	**James F. Huntzicker**		5/20/09
CIP – A&F Director:			
Finance Dept.	Mike Smith (Richards 5/20/09)	MAS	5/21/09
County Attorney:	THOMAS WILLIAMS	JEW	20/2009
CAO/Mayor:	**James F. Huntzicker**		5/21/09

SUMMARY SHEET

I. Description of Item:

RESOLUTION TO APPROVE AN AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE TO NATIONAL CHURCH RESIDENCES OF MEMPHIS (Newberry Heights), a Tennessee not-for-profit corporation, **AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, Tenn. Code Ann.** §67-5-207, et seq., **AT AN AMOUNT OF $5 PER UNIT PER MONTH.**
SPONSORED BY COMMISSIONER JAMES M. HARVEY

II. Source and Amount of Funding:

Recoupment of Costs Agreement will reimburse Shelby County for cost of providing improvements, facilities and services to the housing development concurrent with the State Board of Equalization ("SBOE") approval of tax exempt status, which is conditioned upon National Church Residences of Memphis providing permanent housing to low income elderly, handicap and homeless residents.

III. Contract Items:

Tenn. Code Ann. §67-5-207(a)(2) requires any qualified project that receives a tax exemption to pay any local government for improvements, facilities and services rendered. Governments are limited to charging no more than the actual costs of providing the improvements, facilities and services. The project must be exempt from federal taxes under the Internal Revenue Code, and must provide housing under federal HUD, HCD, McKinney-Vento Homeless Acts, HOME Investment Partnerships Program, or the state-funded Housing Opportunities (HOUSE) Program. The SBOE staff deemed the initial cost determination to be solely a local matter consistent with the statute.

IV. Additional Information Relevant to approval of this item:

Previously, the City of Memphis and Shelby County, by inter-government agreement, charged this type housing project a total fee of Ten ($10) Dollars per unit per month divided either equally or 60/40 to the City and County. The City of Memphis delegated its authority to enter into these agreements to the City's HEHFB by Item 57, Resolution on December 4, 2007. The City also unilaterally changed the methodology and rate of cost to 25% of the amount that the ad valorem realty taxes would have been.

The County Commissioners clarified its County-only recoupment of services policy by Resolution dated March 16, 2009 at $5 per month per unit. This rate is consistent with the approval of a project on October 6, 2008. This going forward rate is applicable to this and similar projects. Projects must qualify and remain exempt-eligible by complying with state and federal discrimination laws, or may be revoked under T.C.A. §67-5-212.

ITEM #_____ PREPARED BY: THOMAS WILLIAMS

COMMISSIONER_____ APPROVED BY: THOMAS WILLIAMS

RESOLUTION TO APPROVE AN AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE TO NATIONAL CHURCH RESUDENCES OF MEMPHIS (Newberry Heights), a Tennessee not-for-profit corporation, **AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, Tenn. Code Ann.** §67-5-207, et seq., **AT AN AMOUNT OF $5 PER UNIT PER MONTH**
SPONSORED BY COMMISSIONER JAMES M. HARVEY

WHEREAS, T.C.A. §67-5-207 states that property of Tennessee not-for-profit corporations either financed under Section 202 of the National Housing Act of 1959, or McKinney-Vento Homeless Assistance Act, or funded under the HOME Investment Partnership Program and used for housing for low income elderly, handicapped, or homeless persons may be exempted from real property taxes, as long as such property complies with the provisions of said Section; and

WHEREAS, T.C.A. §67-5-207(a)(2) provides for recoupment of the cost of providing improvements, facilities and essential services in lieu of real property taxes from these housing developments that are granted an exemption under this Section by the State of Tennessee Board of Equalization, in amounts not to exceed the estimated costs incurred by municipalities or counties to provide the improvements, facilities and/or services to the exempt property; and

WHEREAS, National Church Residences of Memphis is a Tennessee not-for-profit corporation owning real property located at 5819 Newberry Ave, Memphis, Shelby County, Tennessee, operating as Newberry Heights (the "Property"), and has applied to the State Board of Equalization for an exemption from real property taxes for the Property, and said exemption is conditioned upon certain conditions, including filing of a prior agreement for payment in lieu of real property taxes to the County; and

WHEREAS, the Board of Commissioners adopted a Resolution on March 16, 2009 reaffirming its past practice and clarifying its going forward policy to charge each low income housing project under T.C.A. §67-5-207 a cost of Five ($5) Dollars per unit per month to recoup its costs for improvement, facilities and services provided to such projects.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF SHELBY, TENNESSEE, that:

1. The Agreement to Recoup the Cost of Providing Improvements, Facilities and Services to National Church Residences of Memphis for the Newberry Heights Project is hereby approved at a rate of Five ($5) Dollars per unit per month. (attached as "Exhibit A")

2. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, National Church Residences of Memphis shall pay to the County taxing authority for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) an amount equaling the estimated costs incurred by the County to provide improvements, facilities and/or services to the Property, equal to Five ($5) Dollars per unit per month as of the effective date of this agreement in lieu of real property taxes.

3. Within thirty (30) days of the granting of the tax exemption, National Church Residences of Memphis shall pay to the County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.

4. Subject to Paragraph 5 below, the recoupment of costs required by this agreement are to be made on or before February 28th of each year. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

5. The recoupment of costs provided for herein shall continue to be due and

payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. §67-5-207.

6. The parties to this Agreement acknowledge that the County's costs to provide improvements, facilities and/or services to the Property may become greater than the amount of the recoupment of costs made pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the County to accept these payments in lieu of real property tax, and in order to lessen the burden on the County of providing improvements, facilities or services to the Property, Inc, then National Church Residences of Memphis shall cooperate fully with the County to re-negotiate the terms of this agreement every three (3) years from the date of this agreement.

7. The parties agree that the recoupment of costs provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the County in the future.

8. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

9. **BE IT FURTHER RESOLVED**, That the County Mayor is hereby authorized to execute all documents necessary to rescind any prior approval of an Agreement to recoup the cost of providing improvements, facilities and services for National Church Residences of Memphis housing facility at 5819 Newberry Ave., and the Mayor is further authorized to enter an Agreement for the same purpose at a cost recoupment rate of Five ($5) Dollars per unit per month. Said Agreement is attached hereto as "Exhibit A".

_____
A C Wharton, Jr., Shelby County Mayor

Date:_____

ATTEST:_____
Clerk of County Commission

ADOPTED:_____

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

THIS AGREEMENT is made and entered into by and among National Church Residences of Memphis, a Tennessee not-for-profit corporation, for the operation of Newberry Heights (the "Property"), and the County of Shelby (the "County"), on this the _____ of _____, 2009, for payments by National Church Residences of Memphis allowing the County to recoup the County's costs of providing improvements, facilities and services to National Church Residences of Memphis in-lieu-of real property tax, said Agreement effective upon tax exemption by the State of Tennessee. This Agreement is void unless and until said exemption is granted by the State of Tennessee.

WHEREAS, National Church Residences of Memphis is the owner of a certain parcel of real property particularly described in collective attachments hereto, which property is located at 5819 Newberry Avenue, Memphis, Shelby County, Tennessee, and which is identified in the office of the County Assessor under Tax Parcel Number 0934000000224C (the "Property"); and

WHEREAS, the Property is improved as a 49 rental unit apartment building for elderly and handicapped persons, and includes one manager's unit, and operates either under a grant from the Memphis Div. of Housing and Urban Development's HUD 202 Program, or is authorized by Title IV of the McKinney-Vento Homeless Assistance Act and 24 CFR Part 582 for HUD funded rental assistance, or is subject to a Federal Home Loan Bank (Federal Housing Finance Board) grant and/or federal grant or loan, and is located on the Property described in the enumerated exhibits hereto; and

WHEREAS, T.C.A. Section 67-5-207 exempts from real property taxes property of Tennessee not-for-profit corporations qualifying under HUD 202 Program, the McKinney-Vento Act and HOME Investment, or a Federal Home Loan Bank (Federal Housing Finance Board) grant and/or loan upon compliance with law and the State Board of Equalization ("SBOE") rules; and

WHEREAS, T.C.A. Section 67-5-207(a)(2) provides for payments in lieu of real property taxes to be made by property owners granted an exemption under this Section in amounts not to exceed the estimated costs incurred by municipalities or counties to provide improvements, facilities and/or services to the property upon exemption; and

WHEREAS, National Church Residences of Memphis has applied to the SBOE for an exemption from real property taxes for the Property, and said exemption would be conditioned upon certain conditions, including the filing of an agreement with the State Board of Equalization for payments allowing local governments to recoup costs of improvement, facilities and services; and

WHEREAS, the County agrees that National Church Residences of Memphis complies with the conditions and intent of the statute, and that the Property and its intended use complies with the provisions of T.C.A Section 67-5-207; however, the exemption of the Property is subject to the determination of the State Board of Equalization. Therefore, this

EXHIBIT
A

Agreement to reimburse the County for improvements, facilities and services is conditioned upon the approval of the exemption. Otherwise, unless the Property is otherwise exempted under some other means, including a PILOT agreement and leaseback by a governmental entity, then the normal taxes shall apply; and

WHEREAS, National Church Residences of Memphis and the County desire to enter this Agreement requiring National Church Residences of Memphis to reimburse the County for improvements, facilities and services provided to the Property in accordance with T.C.A. Section 67-5-207(a)(2).

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET OUT HEREIN, the receipt and sufficiency of such being hereby acknowledged, the parties agree as follows:

1. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, National Church Residences of Memphis shall pay to the County for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) the total sum of **$2,940** (an amount equal to Five ($5) per month per unit) to reimburse the County for the costs of providing improvements, facilities and services to the exempt Property. Any non-exempt property shall be regularly assessed.

2. Within thirty (30) days of the granting of the tax exemption by the SBOE, National Church Residences of Memphis shall pay to the County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.

3. Subject to Paragraph 4 below, the recoupment cost or payment in lieu of tax required by this Agreement are to be made on or before February 28th each year. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

4. The payments in lieu of tax provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. Section 67-5-207.

5. The parties to this Agreement acknowledge that the costs to the County to provide improvements, facilities and/or services to the Property may be greater than the amount of recoupment specified herein or as amended or modified pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the County to accept payments in lieu of real property tax in amounts less than the regular taxes, and in order to lessen the burden on the County of providing improvements, facilities and/or services to the Property, National Church Residences of Memphis agrees that it will cooperate fully with the County to examine and re-negotiate the terms of this agreement every three (3) years from the date of this agreement.

6. The parties agree that these recoupment payments, which may be termed as "payments in lieu of taxes" by the State Board of Equalization, and which reimburse the County for costs provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the City or County in the future.

7. This Agreement shall be governed by, and construed in accordance with, the law of the State of Tennessee, and shall further inure to the benefit of, and shall be enforceable by and against, the parties hereto, their respective successors and assigns.

8. National Church Residences of Memphis represents and warrants that it is a not-for-profit corporation duly organized and incorporated in the State of Tennessee; that it has received, and at all time during the period of this Agreement, will maintain federal tax exempt status under Section 501(c)(3) or other sections of the Internal Revenue Code of 1986, as amended; and that the Property is and shall remain, at all times relevant during the period of this Agreement, in full compliance with the HUD Agreements, Deeds of trusts and other documents or qualifying conditions under Tenn. Code Annotated § 67-5-207, and other applicable law affecting continued eligibility for exemption from real property taxes or revocation conditions under Tenn. Code Annotated § 67-5-212.

A List of Relevant Documents is Attached Hereto as Exhibits.

IN WITNESS WHEREOF, National Church Residences of Memphis and the County have executed this Agreement the day and year first written above to be effective upon and conditioned upon the Tennessee State Board of Equalization granting a tax exemption pursuant to Tenn. Code Ann. § 67-5-207 for the Property.

NATIONAL CHURCH RESIDENCES OF MEMPHIS

BY:_____

TITLE:_____

ATTEST:

_____

SECRETARY

COUNTY OF SHELBY, TENNESSEE

BY:_____
A C WHARTON, JR., COUNTY MAYOR

ATTEST:

_____
CLERK OF COMMISSION

APPROVED AS TO FORM:

_____
ASST. COUNTY ATTORNEY