

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 22 day of September, 2021, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and Nashville Leased Housing Associates III, Limited Partnership (the “**Owner**”).

WITNESSETH:

WHEREAS, MDHA is a public body and a body corporate and politic organized under the Tennessee Housing Authorities Law, Tenn. Code Ann. §13-20-101, et seq., (the “**Act**”);

WHEREAS, §13-20-104(f) of the Act provides that a metropolitan government may delegate to a housing authority the authority to negotiate and accept in lieu of ad valorem taxes (“**In Lieu of Tax Payments**”) from a party that operates a low income housing tax credit (“**LIHTC**”) property, as such term is defined in the Act (a “**LIHTC Property**”) on property leased by such party from a housing authority;

WHEREAS, MDHA is the housing authority, as defined in the Act, for the Metropolitan Government of Nashville and Davidson County, Tennessee (the “**Metropolitan Government**”);

WHEREAS, by Ordinance No. BL2015-1281 as amended by Ordinance No. BL2016-334 (collectively, the “**PILOT Ordinance**”), the Metropolitan Government (i) authorized MDHA to negotiate and accept In Lieu of Tax Payments from lessees of LIHTC Property owned by MDHA, and (ii) approved MDHA’s program for determining qualifications and eligibility for such In Lieu of Tax Payments (the “**PILOT Program**”);

WHEREAS, Owner plans to acquire land located at 900 Dickerson Pike, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 256 unit apartment project, known as 900 Dickerson, on the Project Site and operate it as a LIHTC Property (the “**Project**”);

WHEREAS, MDHA is authorized by law and has deemed it necessary and desirable to acquire the Project Site for the purpose of facilitating the Project in accordance with the PILOT Program, the PILOT Ordinance and the Act;

WHEREAS, the Board of Commissioners of MDHA approved MDHA’s purchase of the Project Site and authorized the Executive Director of MDHA to take all actions on behalf of MDHA to undertake the following:

- (A) acquire the Project Site;
- (B) enter into a lease with Owner pursuant to which Owner will (i) lease the Project Site and the Project from MDHA with MDHA having the right to cause Owner to purchase the Project Site and the Project from MDHA upon expiration of the tenth (10th) Tax Year, (ii) construct the Project on the Project Site, and (iii) by recorded agreement, commit to operate the Project as a LIHTC Property in accordance with the requirements of the Internal Revenue Code and the Tennessee Housing Development Agency (“THDA”) for a minimum period of fifteen (15) years after the Project is complete (the “**Project Lease**”);
- (C) enter into this PILOT Agreement;
- (D) submit this PILOT Agreement to the Metropolitan Planning Commission to obtain a recommendation of approval or disapproval, as envisioned by the PILOT Ordinance;
- (E) submit this PILOT Agreement to the Metropolitan Council of the Metropolitan Government (the “**Metropolitan Council**”) for approval as required by the PILOT Ordinance; and
- (F) take such other action and execute such other documents as the Executive Director deems necessary or desirable to facilitate construction of the Project and the transactions described above consistent with this PILOT Agreement, the Act, the Project Lease, the Metropolitan Ordinance and the PILOT Program (including MDHA’s application and policies and procedures related thereto).

WHEREAS, MDHA intends to acquire the Project Site from Owner and will concurrently enter into the Project Lease; and

WHEREAS, Owner has agreed to make In Lieu of Tax Payments with respect to the Project as described herein.

NOW, THEREFORE, for and in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, and as an inducement to Owner to construct the Project and operate the Project as LIHTC Property, MDHA and Owner agree as follows:

1. With respect to Project Site and the real property component of the Project, Owner shall make In Lieu of Tax payments to MDHA who will then remit the payment to the Metropolitan Government, as follows:

(a) The In Lieu of Tax Payments shall be equal to the Applicable Ad Valorem Taxes, as defined below, through and including the calendar year in which the construction of the Project is completed.

(b) Commencing on January 1st of the calendar year following the year in which the Project is placed into service (“**Tax Year 1**”) and each tax year subsequent to the Tax Year 1 (Tax Year 1 and each subsequent tax year being referred to herein as a “**Tax Year**”) through the tenth (10th) Tax Year, in Lieu of Tax Payments shall be as follows:

Tax Year	In-Lieu of Tax Payment
1	\$23,821
2	\$24,535
3	\$25,272
4	\$26,030
5	\$26,811
6	\$27,615
7	\$28,443
8	\$29,297
9	\$30,176
10	\$31,081

Subject to Section 1(e) below, the In Lieu of Tax Payments shall be fixed and shall not fluctuate with the amount of the assessment for the Project Site or the Project or the tax rate in effect for any Tax Year. The amount of the In Lieu of Tax Payments is approximately equal to \$93 per unit within the Project, with a three percent (3%) annual increase. In Lieu of Tax Payments for each Tax Year shall be paid when due but in any event not later than the date on which the Applicable Ad Valorem Taxes would become delinquent.

(c) After the tenth Tax Year, this Agreement shall expire and Owner shall pay 100% of the Applicable Ad Valorem Taxes.

(d) The term “**Applicable Ad Valorem Taxes**” shall mean any real property ad valorem taxes that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project.

(e) Notwithstanding anything contained herein to the contrary, if THDA or the IRS determines that the Project is not in compliance with LIHTC requirements and is therefore not operated as a LIHTC Property at any time during a Tax Year, and Owner has failed to cure such default within any specified cure period, Owner shall pay 100% of the Applicable Ad Valorem Taxes with respect to such Tax Year.

(f) Notwithstanding anything contained herein to the contrary,

Owner shall pay 100% of the Applicable Ad Valorem Taxes for the periods before Tax Year 1 and after Tax Year 10, if the Project Lease is in effect during such periods.

2. Commencing in Tax Year 1 and in each Tax Year subsequent through the (10th) Tax Year, Owner shall provide to MDHA an annual report not later than September 1st of each Tax Year containing the following information:

- (a) The value of the Project, as estimated by the Owner;
- (b) The date and remaining term of the Project Lease;
- (c) The amount of In Lieu of Tax Payments payable in such Tax Year;
- (d) The date in which the Project is scheduled to return to the regular tax rolls and be eligible to pay 100% of the Applicable Ad Valorem Taxes following the tenth (10th) Tax Year;
- (e) A calculation of the Applicable Ad Valorem Taxes for such Tax Year that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project;
- (f) A copy of the Owner's most recent Annual Certification as submitted to THDA, certifying compliance with LIHTC requirements; and
- (g) A copy of any monitoring or compliance reports provided by THDA to the Owner during such Tax Year.

3. Commencing with Tax Year 1 and each Tax Year thereafter, Owner shall pay to MDHA a monitoring and reporting fee to be set by MDHA but not to exceed five percent (5%) of the amount In Lieu of Tax Payment due with respect to such Tax Year (the "Annual MDHA Fee"). The Annual MDHA Fee shall be paid not later than fifteenth (15) day of such Tax Year. Unpaid amounts shall bear interest at the rate of four percent (4%) in excess of the average prime rate of interest published from time to time by the Federal Reserve or similar commonly accepted reporting organization if the Federal Reserve ceased to publish such information. Owner's failure to pay the Annual MDHA Fee within thirty (30) days after written notice from MDHA shall constitute a default under this PILOT Agreement in which event Owner shall pay 100% of the Applicable Tax Rate for such Tax Year instead of the In Lieu of Tax Payment set forth above.

4. Owner's payment of the In Lieu of Tax Payments shall satisfy the requirement in Tenn. Code Ann. § 67-5-206(a) that MDHA pay the Metropolitan Government for services, improvements or facilities furnished by the Metropolitan Government for the benefit of the Project.

5. This PILOT Agreement may not be assigned to any party other than the

assignee of the lessee's interest under the PILOT Lease pursuant to an assignment that is made in accordance with the PILOT Lease, including MDHA consent requirements, if any, specified therein. Each permitted assignee shall assume Owner's obligations under this PILOT Agreement concurrent with the assignment of the PILOT Lease.


6. This PILOT Agreement shall be construed in accordance with the laws of the State of Tennessee, and if any one or more of the provisions of this PILOT Agreement shall be held invalid, illegal or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, legality or unenforceability shall not affect any other provision hereof, but this PILOT Agreement shall be construed the same as if such invalid, illegal or unenforceable provision had never been contained herein. This PILOT Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

7. This PILOT Agreement is subject to and conditioned upon (i) approval of this PILOT Agreement by the Metropolitan Council as required by the PILOT Ordinance, (ii) Owner's satisfaction of all conditions and requirements imposed by MDHA in connection this PILOT Agreement or the transaction contemplated herein, (iii) MDHA taking title to the Property and entering into a mutually acceptable Project Lease, and (iv) THDA's approval of the Project and allocation of low income housing tax credits, to the extent such approval or allocation has not been received as of the date of this PILOT Agreement.

8. MDHA shall remit all In Lieu of Tax Payments received in connection with the Project and/or the Project Lease to the Metropolitan Government within fifteen (15) days of receipt.

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and date first above written.

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY

By: 
Title: Executive Director

Nashville Leased Housing Associates III, Limited Partnership,
a Minnesota limited partnership

By: Nashville Leased Housing Associates III, LLC,
a Minnesota limited liability company

Its: General Partner

By: 

Name: Ryan J. Lunderby
Title: Vice President

FILED WITH THE METROPOLITAN CLERK

Elizabeth Waites

Date

EXHIBIT A

Being a tract of land lying in the 5th Council District of Davidson County, Nashville, Tennessee. Tract being Lots 12-15, Pt. 17, 18, 19 & Pt. 20 of the Plat of J.R. Love and E. A. Hail Subdivision as recorded in Plat Book 421, Page 130, Register's Office of Davidson County, Tennessee (RODC), and being Lot 1 OF The Resubdivision of Lot No. 3 of the Mary R. Brown Heirs Land as recorded in Plat Book 6050, Page 274, RODC. Bounded on the south by the northern Right-of-Way (R-O-W) of Cleveland Street; on the west by Lot 1 of Resubdivision of Lots 1 and 2 of Section 2 of the Cleveland Street Commercial Plat as recorded in Plat Book 6900, Page 796, RODC; on the west and north by Lot 3 of Section 2 of Cleveland Street Commercial Plat as recorded in Plat Book 6900, Page 51, RODC; on the north by Marquice L. Patton as recorded in Instrument Number 201211150105205, RODC; on the east by the western R-O-W of Whites Creek Pike and by the western R-O-W of Dickerson Pike. Tract being more particularly described as follows:

POINT OF BEGINNING being a found being PK Nail lying on the intersection of the western R-O-W of said Dickerson Pike and the northern R-O-W of said Cleveland Street; thence with the northern R-O-W of said Cleveland Street, North 83°57'48" West 145.95 feet to a found iron rod with "Cherry" cap; thence with the eastern boundary line of said Lot 1 of the Resubdivision of Lots 1 and 2 of Section 2 of the Cleveland Street Commercial Plat for the following four (4) calls: North 05°55'36" East 99.90 feet to a found iron rod with "Burns #1053" cap; thence North 05°48'42" East 119.12 feet to a found "Cherry" PK nail; thence North 05°23'19" East 83.98 feet to a point; thence North 04°58'19" East 180.28 feet to a found iron rod with "Cherry" cap; thence continuing with said eastern boundary of Lot 1 and with the eastern boundary line of said Lot 3 of Section 2 of Cleveland Street Commercial Plan, North 17°49'44" West 61.99 feet to a point; thence with the southern boundary line of said Lot 3 of Section 2 of Cleveland Street Commercial Plan, North 83°59'57" East 25.00 feet to a point; thence with the southern boundary of said Marquice L. Patton, North 83°10'03" East 110.97 feet to a found iron rod with "Delle" cap; thence with the western R-O-W of said Whites Creek Pike, South 30°10'34" East 96.61 feet to a found PK nail; thence with the western R-O-W of said Dickerson Pike for the following seven (7) calls: South 08°37'51" West 186.85 feet to a found iron rod with "Cherry" cap; thence North 84°48'41" West 7.00 feet to a found "Cherry" PK nail; thence South 08°37'51" West 84.13 feet to a found "Cherry" PK nail; thence South 84°48'41" East 7.00 feet to a found "Cherry" PK nail; thence South 08°37'51" West 46.56 feet to a point; thence South 05°55'10" West 74.70 feet to a found ½" iron rod; thence South 05°44'52" West 100.00 feet to the point of beginning.

Less and except that portion of the property conveyed by Agreement for Dedication of Public Right-of-Way as of record in Book _____, Page _____, in the Register's Office of Davidson County, Tennessee:

Being a tract of land lying in the 5th Council District of Davidson County, Nashville, Tennessee. Tract being a portion of Lots 12-15, Pt. 17, 18, 19 & Pt. 20 of the Plat of J.R. Love and E. A. Hail Subdivision as recorded in Plat Book 421, Page 130, Register's Office of Davidson County, Tennessee (RODC), and being a portion of Lot 1 of The Resubdivision of Lot No. 3 of the Mary R. Brown Heirs Land as recorded in Plat Book 6050, Page 274, RODC. Bounded on the north by Marquice L. Patton as recorded in Instrument Number 201211150105205, RODC; on the east by the western Right-of-Way (R-O-W) of Whites Creek Pike and by the western R-O-W of

Dickerson Pike; on the south by the northern R-O-W of Cleveland Street; on the west by Lot 1 of Resubdivision of Lots 1 and 2 of Section 2 of the Cleveland Street Commercial Plat as recorded in Plat Book 6900, Page 796, RODC; on the north by said portion of Lot 12 of the Plat of J.R. Love and E. A. Hail Subdivision; bounded on the west by remainder of said Lots 12-15, Pt. 17, 18, 19 & Pt. 20 of the Plat of J.R. Love and E. A. Hail Subdivision and remainder of Lot 1 OF The Resubdivision of Lot No. 3 of the Mary R. Brown Heirs Land. Tract being more particularly described as follows:

POINT OF BEGINNING being a point lying on said northern R-O-W of Cleveland Street, being the southwest corner of the herein described tract and the southeast corner of said Lot 1 of Resubdivision of Lots 1 and 2 of Section 2 of the Cleveland Street Commercial Plat thence North $05^{\circ}55'36''$ East a distance of 3.50 feet to a point;
thence with the new R-O-W line for the following (17) calls: South $83^{\circ}57'48''$ East a distance of 58.53 feet to a point;
thence North $51^{\circ}02'12''$ East a distance of 6.36 feet to a point;
thence South $83^{\circ}57'48''$ East a distance of 52.63 feet to a point;
thence South $38^{\circ}57'48''$ East a distance of 6.36 feet to a point;
thence South $83^{\circ}57'48''$ East a distance of 10.04 feet to a point;
thence North $05^{\circ}46'13''$ East a distance of 111.49 feet to a point;
thence South $84^{\circ}04'52''$ East a distance of 5.25 feet to a point;
thence North $05^{\circ}55'08''$ East a distance of 59.95 feet to a point;
thence North $08^{\circ}37'49''$ East a distance of 35.66 feet to a point;
thence North $08^{\circ}44'00''$ East a distance of 7.01 feet to a point;
thence North $08^{\circ}37'49''$ East a distance of 91.14 feet to a point;
thence North $08^{\circ}31'38''$ East a distance of 7.03 feet to a point;
thence North $08^{\circ}37'49''$ East a distance of 163.95 feet to a point;
thence with a curve turning to the left with an arc length of 27.09 feet, with a radius of 40.00', with a chord bearing of North $10^{\circ}46'24''$ West, with a chord length of 26.58 feet to a point;
thence North $30^{\circ}10'36''$ West a distance of 78.31 feet to a point;
thence North $83^{\circ}10'03''$ East a distance of 8.16 feet to a point on said western R-O-W of Whites Creek Pike;
thence with said western R-O-W of Whites Creek Pike South $30^{\circ}10'34''$ East a distance of 96.61 feet to a point lying on the intersection of said western R-O-W of Whites Creek Pike and said western R-O-W of Dickerson Pike;
thence with said western R-O-W of Dickerson Pike for the following (8) calls: South $08^{\circ}37'51''$ West a distance of 186.85 feet to a point;
thence North $84^{\circ}48'41''$ West a distance of 7.00 feet to a point;
thence South $08^{\circ}37'51''$ West a distance of 84.13 feet to a point;
thence South $84^{\circ}48'41''$ East a distance of 7.00 feet to a point;
thence South $08^{\circ}37'51''$ West a distance of 46.56 feet to a point;
thence South $05^{\circ}55'10''$ West a distance of 74.70 feet to a point;
thence South $05^{\circ}44'52''$ West a distance of 100.00 feet to a point;
thence North $83^{\circ}57'48''$ West a distance of 145.95 feet to the point of beginning.

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METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201
615.862.7150
615.862.7209

Memo

To: MDHA
From: Metropolitan Nashville Planning Department
Date: July 1, 2021
Re: Planning Commission Recommendation for PILOT Agreement

This memo fulfills the Planning Commission obligations as outlined in the MDHA Housing Tax Credit PILOT Program General Program Description which was attached as Exhibit A to BL2016-435. The memo consists of two parts.

PART I: RECOMMENDATION ON GENERAL PLAN CONSISTENCY

Project: **900 Dickerson Pike (Parcels 08202005200, 08202005100, 08202005000, 08202004900, 08202004700, 08202004600, 08202004400)**
255 multi-family residential units
All units are income and rent restricted at 60% or less of area median income (AMI)

Zoning: Commercial Service is intended for retail, consumer service, financial, restaurant, office, self-storage, light manufacturing and small warehouse uses. *The site is also within the Urban Zoning Overlay (UZO).*

Urban Design Overlay (UDO) is intended to allow for the application and implementation of special design standards with the intent of achieving a sense of place by fostering a scale and form of development that emphasizes sensitivity to the pedestrian environment, minimizes intrusion of the automobile into the built environment, and provides for the sensitive placement of open spaces in relationship to building masses, street furniture and landscaping features in a manner otherwise not insured by the application of the conventional bulk, landscaping and parking standards of the Zoning Code. *The site is within the Dickerson Pike Sign UDO.*

Policy: T4 Urban Mixed Use Corridor (T4 CM) is intended to enhance urban mixed use corridors by encouraging a greater mix of higher density residential and mixed use development along the corridor, placing commercial uses at intersections with residential uses between intersections; creating buildings that are compatible with the general character of urban neighborhoods; and a street design that moves vehicular traffic efficiently while accommodating sidewalks, bikeways, and mass transit.

The site is also located with the Dickerson South Corridor Policy. The Dickerson South Study (DSS) provided several guidance principles including subdistrict guidance and mobility planning. The

subdistrict guidance indicates building heights up to six stories of being appropriate at this location. An extension of Cleveland Street is planned south of the site.

Project Details: The site is comprised of several parcels totaling 1.9 acres located at the northwest corner of the intersection of Dickerson Pike and Cleveland Street. The site has frontage along both streets.

The proposed plan shows a single structure on the site. The proposed structure is five stories of residential units above two stories of structure parking lined with amenity spaces, common spaces, and walk out units.

The proposed project consists of 6 studio units, 153 1-bedroom units, 65 2-bedroom units, and 31 3-bedroom units, for a total of 255 units. All the proposed units are income and rent restricted at 60% or less of the area median income (AMI).

Planning Department Analysis: The property is currently zoned Commercial Services (CS). Multi-family residential is permitted with conditions in the CS zoning district. These conditions are outlined in Section 17.06.030.F of the Metro Code. The site is eligible for Adaptive Residential Development as it is located within the urban services district and has the majority of its frontage on an arterial street, Dickerson Pike, and the project is over 40 percent residential.

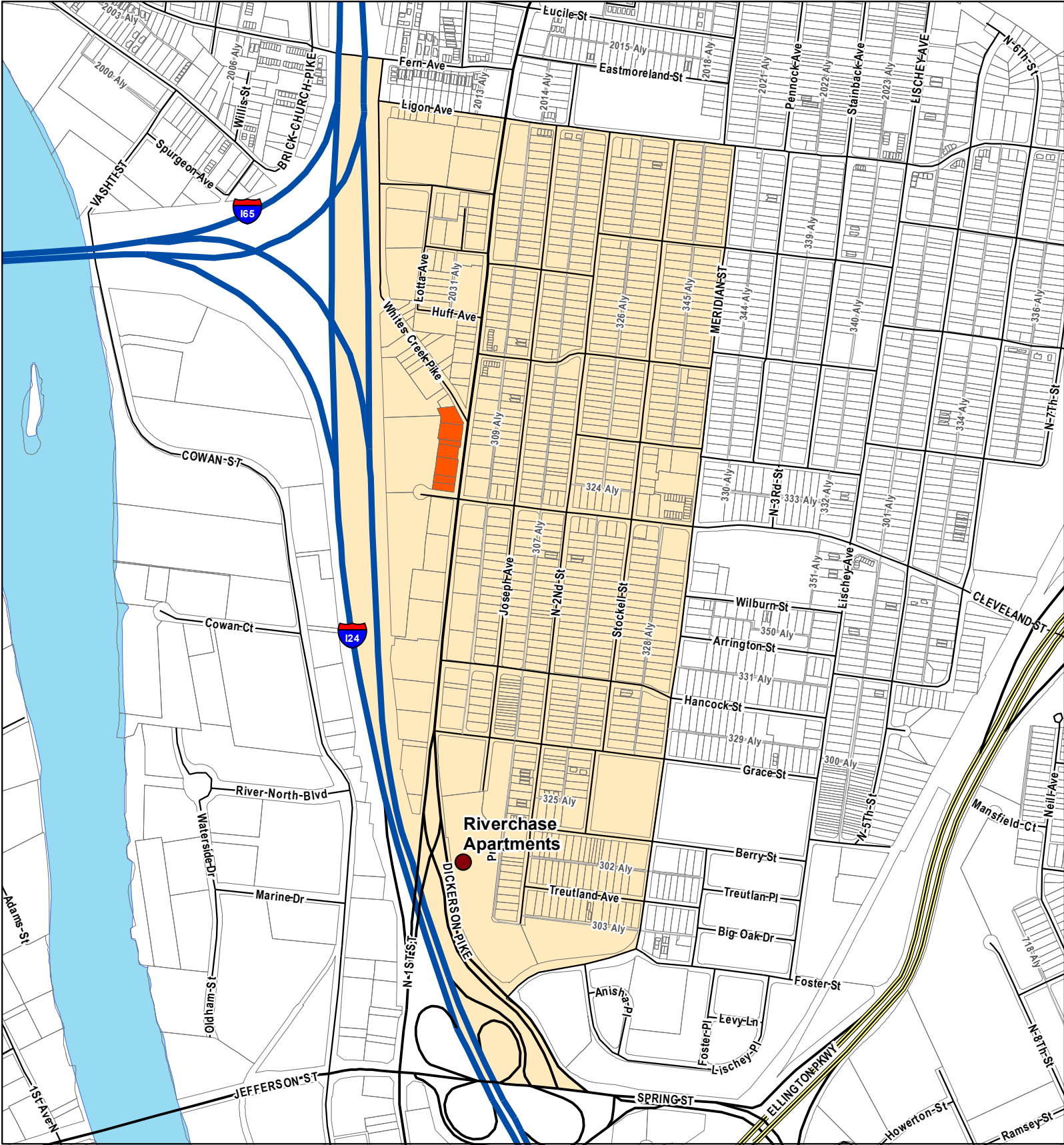
The intent of the Urban Mixed-Use Corridor (T4 CM) is to enhance urban mixed-use corridors by encouraging a greater mix of higher-density residential and mixed-use development. The conceptual framework within the Dickerson South Study (DSS) indicates a building height of six stories and a planned extension of Cleveland Street along the southern property line of the site. The height guidance for the property immediately to the west is 12 stories in height. The DSS envisioned increased heights on the west side of Dickerson Pike to take pressure off of the eastern side of Dickerson Pike and the existing neighborhoods in the area. The T4 CM policy and supplemental policy indicate that taller heights may be appropriate when transitioning to more intense policies, the planned height of surrounding buildings, location along arterial-boulevard streets that are sufficiently wide to avoid the effect of a building overshadowing the street, and the location within a tiered center or high capacity transit corridor as identified in Nashville Next. In this case, there is a more intense policy to the west, with increased heights identified in the DSS and Dickerson Pike is a wide arterial boulevard. These factors support the proposed seven story building height. Within Nashville Next, the site is identified as a Second Tier Center and immediate need multi-modal transit corridor. The DSS had indicated that the location at the intersection of Cleveland Street and Dickerson Pike would best be served with a mixed-use development, providing commercial uses along the ground floor. While the proposed project is completely residential, the portion of the building at the corner is indicated as the lobby and units fronting Dickerson Pike would have ground floor entrances, providing a similar policy intent to create a relationship between the public and private realm along streets and corridors.

Planning Determination: The proposed site plan meets several goals of the policies on the site including providing high intensity residential development along a corridor, consistent with the development guidance in the policies on site. Any proposed development on the site will be required to meet Metro Code Regulations and comply with the standards of any overlays on the site. This project is consistent with the NashvilleNext adopted general plan and the Community Character Policies.

**PART II: LIST OF FEDERALLY SUBSIDIZED MULTI-FAMILY PROPERTIES
WITHIN THE CENSUS TRACT**

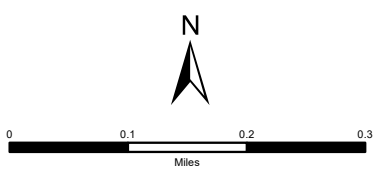
See attached map.

Federally Subsidized Multi-Family Projects within Census Tract 47037012600



Low Income Tax Credit Project	# of Units
Riverchase Apartments	212

- Low Income Tax Credit Project
- Parcels 08202005200, 08202005100, 08202005000, 08202004900, 08202004700, 08202004600, 08202004400



Certification of Consistency with the Consolidated Plan

U.S. Department of Housing
and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.
(Type or clearly print the following information:)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

Name of the Federal
Program to which the
applicant is applying: _____

Name of
Certifying Jurisdiction: _____

Certifying Official
of the Jurisdiction
Name: _____

Title: _____

Signature: _____

Date: _____