

## **PILOT AGREEMENT**

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 20 day of January, 2023, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and 301 Ben Allen, LP (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 301 Ben Allen Road, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 238 unit apartment project, known as Ben Allen Apartments, 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 (10<sup>th</sup>) 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 1<sup>st</sup> 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 (10<sup>th</sup>) Tax Year, in Lieu of Tax Payments shall be as follows:

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1	\$35,700
2	\$36,771
3	\$37,874
4	\$39,010
5	\$40,181
6	\$41,386
7	\$42,628
8	\$43,906
9	\$45,224
10	\$46,580

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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 \$150 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 (10<sup>th</sup>) Tax Year, Owner shall provide to MDHA an annual report not later than September 1<sup>st</sup> 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 (10<sup>th</sup>) 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.



## EXHIBIT A

### LEGAL DESCRIPTION

301 Ben Allen Road, Nashville, Tennessee 37207

#### **TRACT I (Tax Parcel 06100001700):**

Land in Davidson County, Tennessee, being described as follows:

A tract of land being Number Eleven as described according to a survey, as follows: Beginning at an iron pin set in the northeasterly R.O.W. of Ben Allen Road, said pin being located 175.43 ft as measured in an easterly direction along said R.O.W., from the intersection of said R.O.W. with the west boundary of Tract I, as shown in the deed to David Hugh Thompson as of record in Book 2803, Page 559, R.O.D.C., Tennessee proceeding as follows: Thence leaving said R.O.W., North 05 deg. 07'38" East, a distance of 682.62 ft. to an iron pin; thence South 89 deg. 26'36" East, a distance of 185.63 ft. to an iron pin; thence South 00 deg. 07'27" West, a distance of 200.00 ft to an iron pin; thence South 89 deg. 52'33" East, a distance of 31.00 ft. to an iron pin; thence South 00 deg. 07'27" West, a distance of 215.00 ft. to an iron pin; thence South 89 deg. 52'33" East, a distance of 86.80 ft. to an iron pin; thence South 10 deg. 41'11" East, 370.67 ft. to an iron pin; thence South 37 deg. 55'57" West, a distance of 182.54 feet to an iron pin set in said R.O.W. of Ben Allen Road; thence with said R.O.W., North 52 deg. 04'03" West, a distance of 342.74 ft. to an iron pin; thence in a westerly direction with a curve to the left having a radius of 576.17 ft. an arc distance of 60.65 ft. to the beginning and containing 5.686 acres, more or less, according to a survey by Barry Greer and Associates, 2103 Windsor Place, Mt. Juliet, Tennessee, License Number 211.

#### **TRACT II (Tax Parcel 06100008400):**

Land in Davidson County, Tennessee, being Tract Number One, described as follows:

Beginning at an iron pin by a fence post in the north R.O.W. of Ben Allen Road, said point being the southwest corner of Tract One, of the property conveyed to David Hugh Thompson, by deed of record in Book 2803, Page 559, Register's Office for Davidson County, Tennessee, and being the southeast corner of the property conveyed to W. H. Hendrickson by deed of record in Book 5365, Page 886, R.O.D.C., TN and proceeding as follows: With the East line of said Hendrickson, passing the northeast corner thereof, and continuing with the east line of the property conveyed to Raymond M. Pegram, by deed of record in Book 6740, Page 682, R.O.D.C., TN, passing the northeast corner thereof; thence with the east line of the property conveyed to Plumbers and Pipefitters Corporation, as of record in Book 5824, Page 701, R.O.D.C., TN, North 09 deg. 32'35" East, a distance of 714.13' to a corner post; thence with the south line of the property conveyed to Zola Bailey, by deed of record in Book 2813, Page 262, R.O.D.C., TN, South 81 deg. 14' 03" East, a distance of 399.88' to an iron pin; thence, continuing with said Bailey, South 80 deg. 46'00" East, a distance of 166.65' to an iron pin; thence, leaving the line of said Bailey, and severing the land of said Thompson, South 05 deg. 30'08" West, a distance of 424.73' to an iron pin; thence North 89 deg. 52'33' West, a distance of 200.00' to an iron pin; thence North 00 deg. 07'27" East, a distance of 215.00' to an iron pin; thence North 89

deg. 52'33" West, a distance of 31.00' to an iron pin; thence North 00 deg. 07'27" East, a distance of 200.00' to an iron pin; thence North 89 deg. 26'36" West, a distance of 185.63' to an iron pin; thence South 05 deg. 07'38" West, a distance of 682.62 feet to an iron pin set, in said North R.O.W. of Ben Allen Road; thence with said R.O.W. in a westerly direction, with a curve to the left having a radius of 576.17', an arc distance of 175.43' to the beginning and containing 5.025 acres, more or less, as described according to survey by Barry Greer and Associates, 2103 Windsor Place, Mt. Juliet, Tennessee, License Number 211.

Tracts I and II being the same property conveyed unto 301 BEN ALLEN, LLC, A TENNESSEE LIMITED LIABILITY COMPANY, by Warranty Deed from JAMES T. RALPH AND CONNIE J. EZELL-RALPH, HUSBAND AND WIFE, of record by Instrument No. 20181106-0110041, dated November 2, 2018, as corrected by Scrivener's Affidavit of record by Instrument No. 20200609-0059051, dated June 9, 2020, said Register's Office.



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

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# Memo

**To:** MDHA  
**From:** Metropolitan Nashville Planning Department  
**Date:** December 16, 2022  
**Re:** Planning Commission Recommendation for PILOT Agreement

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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:** **Ben Allen Ridge (06100001700, 301 Ben Allen Road)**  
238 multi-family units  
Units targeting 60% AMI and below

**Zoning:** Specific Plan-Residential (SP-R) is a zoning district category that provides for additional flexibility of design, including the relationship of streets to buildings, to provide the ability to implement the specific details of the General Plan. *This Specific Plan includes only one residential building type.*

### Policy:

T3 Suburban Neighborhood Center (T3 NC) is intended to enhance and create suburban neighborhood centers that serve suburban neighborhoods generally within a 5 minute drive. They are pedestrian friendly areas, generally located at intersections of suburban streets that contain commercial, mixed use, residential, and institutional land uses. T3 NC areas are served with well-connected street networks, sidewalks, and mass transit leading to surrounding neighborhoods and open space. Infrastructure and transportation networks may be enhanced to improve pedestrian, bicycle and vehicular connectivity.

T3 Suburban Neighborhood Evolving (T3 NE) is intended to create and enhance suburban residential neighborhoods with more housing choices, improved pedestrian, bicycle and vehicular connectivity, and moderate density development patterns with moderate setbacks and spacing between buildings. T3 NE policy may be applied either to undeveloped or substantially under-developed “greenfield” areas or to developed areas where redevelopment and infill produce a different character that includes increased housing diversity and connectivity. Successful infill and redevelopment in existing neighborhoods needs to take into account considerations such as timing and some elements of the existing developed character, such as the street network, block structure, and proximity to centers and corridors. T3 NE areas are developed with creative thinking in environmentally sensitive building and site development techniques to balance the increased growth and density with its impact on area streams and rivers.

Conservation (CO) is intended to preserve environmentally sensitive land features through protection and remediation. CO policy applies in all Transect Categories except T1 Natural, T5 Center, and T6 Downtown. CO policy identifies land with sensitive environmental features including, but not limited to, steep slopes, floodway/floodplains, rare or special plant or animal habitats, wetlands, and unstable or problem soils. The guidance for preserving or enhancing these features varies with what Transect they are in and whether or not they have already been disturbed.

**Project Details:**

The site is approximately 10.71 acres located on the north side of Ben Allen Road, east of Hillside Road. Surrounding properties are zoned Specific Plan, Single-Family Residential (RS10), One and Two-Family Residential (R10). Surrounding land uses include single-family residential, multi-family residential, and several vacant properties.

The site plan consists of several multi-family buildings, surface parking, and a greenway trail throughout the site. The proposed development includes 238 multi-family units consisting of studios, one bedrooms, two-bedrooms, and three-bedrooms. Rents are restricted for individuals making 60% AMI and below for 15 years.

**Planning Department Analysis:**

There are three policies on the site: Suburban Neighborhood Center (T3 NC), Suburban Neighborhood Evolving (T3 NE), and Conservation (CO). As the site is zoned Specific Plan (SP), the zoning and site plan has previously been reviewed against the policies on the site. The SP was approved by Metro Planning Commission and Metro Council in 2021 under case number 2021SP-020-001/BL2021-810.

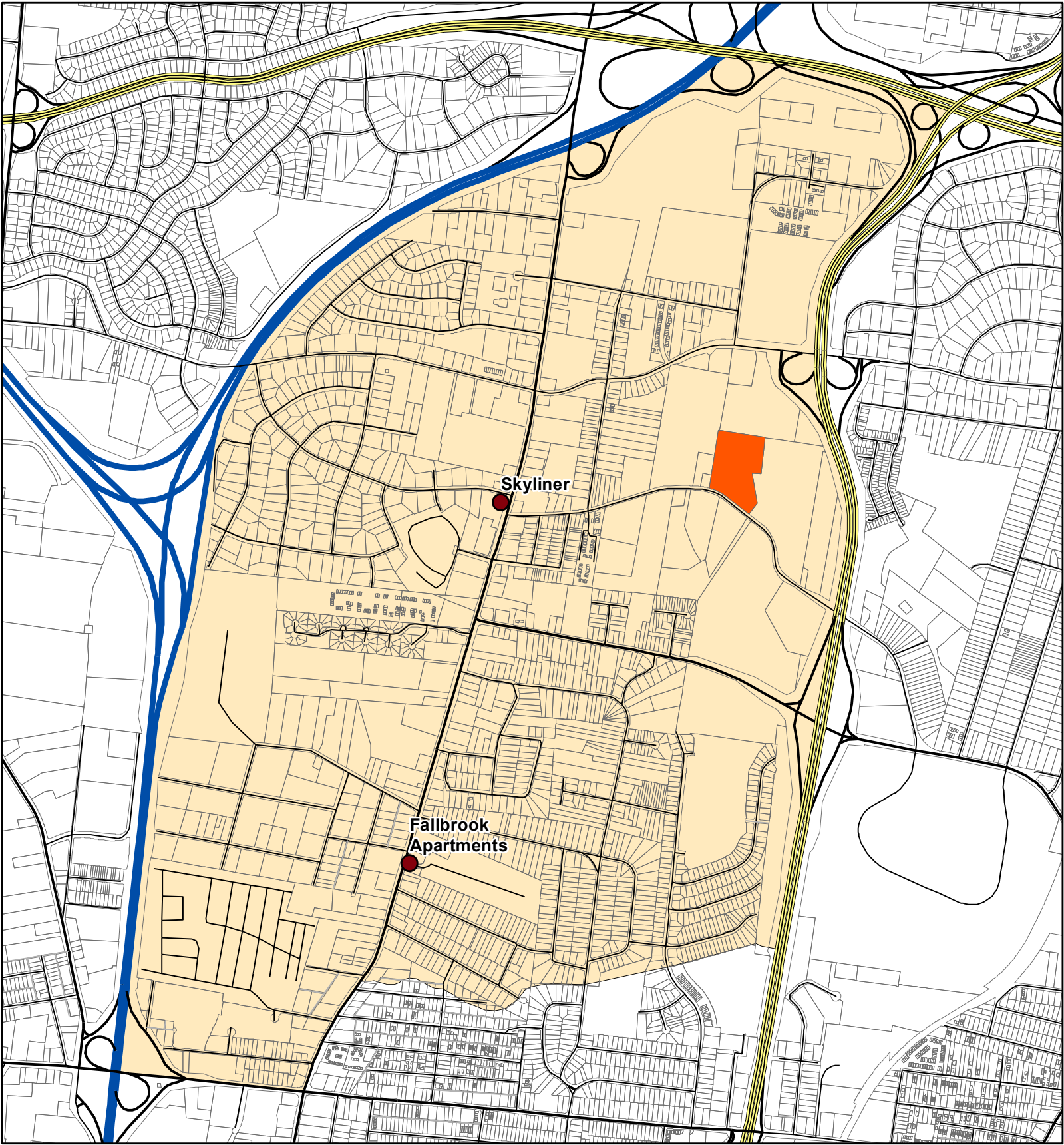
The T3 NC and T3 NE policies have many shared goals including to provide development at a suburban level with greater housing choice, environmentally sensitive development techniques, and improved connectivity. The proposed development includes: multi-family units in an area largely single-family and two-family area, sidewalks along Ben Allen, and a new greenway connection throughout the site. The Conservation (CO) policy on the site is in place due to a series of streams through the site with some areas of 15 percent to 20 percent. The site plan was designed to avoid the environmental features on the site.

**Planning Determination:** The proposed development is consistent with the NashvilleNext adopted general plan and the Community Character Policies.

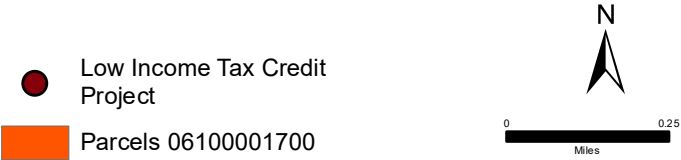
**PART II: LIST OF FEDERALLY SUBSIDIZED MULTI-FAMILY PROPERTIES WITHIN THE CENSUS TRACT**

See attached map.

Federally Subsidized Multi-Family Projects  
within Census Tract 47037011001



Low Income Tax Credit Project	# of Units
Fallbrook Apartments	244
Skyliner	118



# 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: Emel Alexander

Date: \_\_\_\_\_