

## PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 1 day of August, 2024, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and Shelby House II, 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 has acquired land located at 400 South 5<sup>th</sup> Street, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to develop a 289 unit apartment project, known as 4<sup>th</sup> and Shelby, 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) rehabilitate 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 rehabilitation 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 rehabilitate 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 rehabilitation 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	\$15,895
2	\$16,372
3	\$16,863
4	\$17,369
5	\$17,890
6	\$18,427
7	\$18,979
8	\$19,549
9	\$20,135
10	\$20,739

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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 \$55 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.

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:  \_\_\_\_\_  
TLC327FEFF284E...

Executive Director

Title: \_\_\_\_\_

SHELBY HOUSE II, LP

By:  \_\_\_\_\_

Title: Manager \_\_\_\_\_

FILED WITH THE METROPOLITAN CLERK

\_\_\_\_\_  
Austin Kyle

\_\_\_\_\_  
Date

**EXHIBIT A**

**Legal Description of the Property**

Certain real property in Davidson County, State of Tennessee, described as follows, to wit:

Unit No. 3, together with the appurtenant interest in the common elements and limited common elements of Shelby House Condominium, a condominium established by the Declaration of the Shelby House Condominium of record in Instrument No. 20211210-0164269, Register's Office for Davidson County, Tennessee, said Unit being depicted on the Plat of the Shelby House Condominium attached as an Exhibit to the aforementioned Declaration, being more particularly described as follows:

Being a tract of land lying in Nashville, Davidson County, Tennessee, and being more particularly described as follows;

Beginning at an existing pk nail at the intersection of the easterly right-of-way line of South 4<sup>th</sup> Street and the southerly right-of-way line of Alley #263;

Thence leaving the easterly right-of-way line of South 4<sup>th</sup> Street with the southerly right-of-way line of Alley #263, with a curve to the right, along an arc length of 31.47 feet, the central angle of which is 90 deg 08 min 38 sec, the radius of which is 20.00 feet, the chord of which is North 20 deg 11 min 39 sec East, 28.32 feet to an existing pk nail;

Thence North 65 deg 15 min 58 sec East, 220.49 feet to an existing iron rod;

Thence North 24 deg 52 min 44 sec West, 6.45 feet to an existing pk nail;

Thence North 65 deg 16 min 00 sec East, 179.88 feet to an existing iron rod;

Thence with a curve to the right, along an arc to the right, along an arc length of 31.54 feet, the central angle of which is 90 deg 20 min 41 sec, the radius of which is 20.00 feet, the chord of which is South 69 deg 33 min 39 sec East, 28.37 feet to an existing pk nail at the intersection with the westerly right-of-way line of South 5<sup>th</sup> Street;

Thence leaving the southerly right-of-way line of Alley #263, with the westerly right-of-way line of South 5<sup>th</sup> Street, South 24 deg 23 min 19 sec East, 164.22 feet to a point;

Thence leaving the westerly right-of-way line of South 5<sup>th</sup> Street, with a line through the property of Samaritan Recovery Community, Inc., as of record in Instrument Number: 20210212-0020097, at the Register's Office for Davidson County, Tennessee for the following three calls;

- 1) South 65 deg 18 min 08 sec West, 259.54 feet to a point;
- 2) South 24 deg 20 min 34 sec East, 30.27 feet to a point;
- 3) South 65 deg 06 min 51 sec West, 179.14 feet to a point in the easterly right-of-way line of South 4<sup>th</sup> Street;

Thence with the easterly right-of-way line of South 4<sup>th</sup> Street, North 24 deg 53 min 08 sec West, 12.56 feet to an existing pk nail;

Thence North 24 deg 52 min 40 sec West, 175.86 feet to the POINT OF BEGINNING. Containing 84,759 square feet or 1.946 acres more or less.

Being a portion of the same property conveyed to Samaritans, Inc., as of record in Deed Book 4205, Page 340, at the Register's Office for Davidson County, Tennessee and the property conveyed to Samaritan Recovery Community, Inc., as of record in Instrument Number: 20021218-0156176 and Instrument Number: 20061204-0149313, at the Register's Office for Davidson County, Tennessee.

Also, being a portion of the same property described in Quitclaim Deed to consolidate the property from Samaritan Recovery Community, Inc., a Tennessee nonprofit corporation, formerly known as Samaritans, Inc., a Tennessee corporation, to Samaritan Recovery Community, Inc., a Tennessee nonprofit corporation, recorded on February 12, 2021 in Instrument No. 20210212-0020097, in the Register's Office for Davidson County, Tennessee.

Such real property being benefited and burdened by those easements set forth in Declaration of Easements of record in Instrument No. 20211210-0164270, in the Register's Office for Davidson County, Tennessee.

# 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: \_\_\_\_\_



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:** July 11, 2024  
**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:** **Shelby House II (093030A00300CO, 400 South 5<sup>th</sup> Street)**  
289 multi-family units  
Units targeting 60% Area Median Income (AMI)

**Zoning:**

Mixed Use General-Alternative (MUG-A) is intended for a moderately high intensity mixture of residential, retail, and office uses and is designed to create walkable neighborhoods through the use of appropriate building placement and bulk standards. *This site is also located in the Urban Zoning Overlay (UZO).*

**Policy:**

T5 Center Mixed Use Neighborhood (T5 MU) is intended to maintain, enhance, and create high-intensity urban mixed use neighborhoods with a development pattern that contains a diverse mix of residential and non-residential land uses. T5 MU areas are intended to be among the most intense areas in Davidson County. T5 MU areas include some of Nashville's major employment centers such as Midtown that represent several sectors of the economy including health care, finance, retail, the music industry, and lodging. T5 MU areas also include locations that are planned to evolve to a similar form and function.

**Project Details:**

The site is located at the northwest intersection of Shelby Avenue and S 5<sup>th</sup> Street. The southern property line abuts Shelby Avenue, the eastern property line abuts S 5<sup>th</sup> Street, the western property line abuts S 4<sup>th</sup> Street, and the northern property line abuts Alley 263.

The application is for Phase 2 of the Shelby House Redevelopment project. The plan includes three phases of development and a parking deck. Phase 1 included the redevelopment of the Shelby House for 195 units and a new 75,000 square foot facility for the Samaritan Recovery Community (SRC). The renovated space will allow 132 residents for SRC rehabilitation services for clients who are 99% below 60% AMI income levels in addition to 474 new construction affordable apartments over the two phases, reserved for families on average 60% of area median income (AMI). In total, the 474 units will serve a

wide mix of families and residents making between no income and 80% AMI. In total roughly 600 units will be created across Phase 1 and Phase 2. Phase 1 and the parking deck are currently under construction.

Phase 2 is located on the northern portion of the parcel and proposes 289 residential units. Phase 2 specifically proposed 70 units at 30% AMI, 114 units at 60% AMI and 105 units at 80% AMI. There will be 68 studio apartments, 211 one-bedroom, and 10 two-bedroom units.

**Planning Department Analysis:**

The proposed multi-family space is permitted in the MUG-A zoning district. MUG-A also supports a variety of non-residential uses that could permit the inclusion of rehabilitation services. At the time of building permit review, the proposed site plan will need to meet the recommendations of the existing zoning on site. The proposed site plan has been evaluated against the policy, but not against the requirements of Codes.

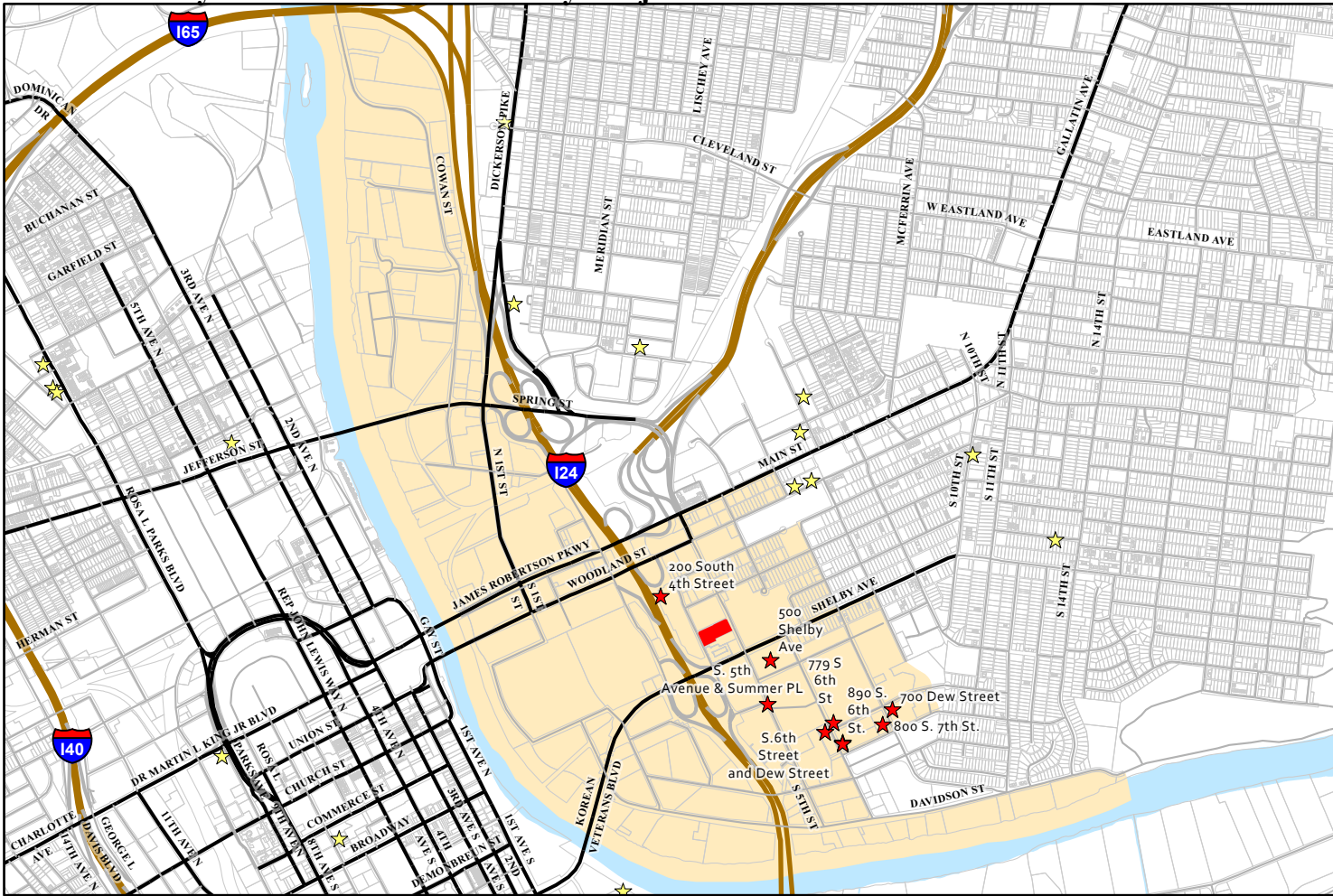
The policy on the site, T5 MU, is intended to maintain, enhance, and create high-intensity urban mixed-use neighborhoods with a diverse mix of residential and non-residential land uses. The policy encourages high density residential development, as shown on the proposed site plan. The policy also encourages the provision of services to meet the daily needs of residents in the neighborhood and within a five-to-ten-minute walk of the area, as well as services that are needed less frequently within a regional service area. Other characteristics of the policy which benefit the project site and are enhanced by the project site include walkability, urban building placement, location along streets, and access to transit. Because of the close proximity to the East Bank Redevelopment, residences will be able to enjoy the services and amenities in the area.

**Planning Determination:** The proposed redevelopment of Phase 2 of the Shelby House development as outlined in the PILOT submittal meets the intent of the policy including establishing high-density residential and providing services to the immediate and larger community. 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.

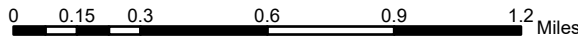
# Federally Subsidized Multi-Family Projects within Census Tract 47037019300



- 400 S 5th Street
- ★ Federal affordable housing units in Tract
- Tract 47037019300
- ★ Other Federal affordable housing units

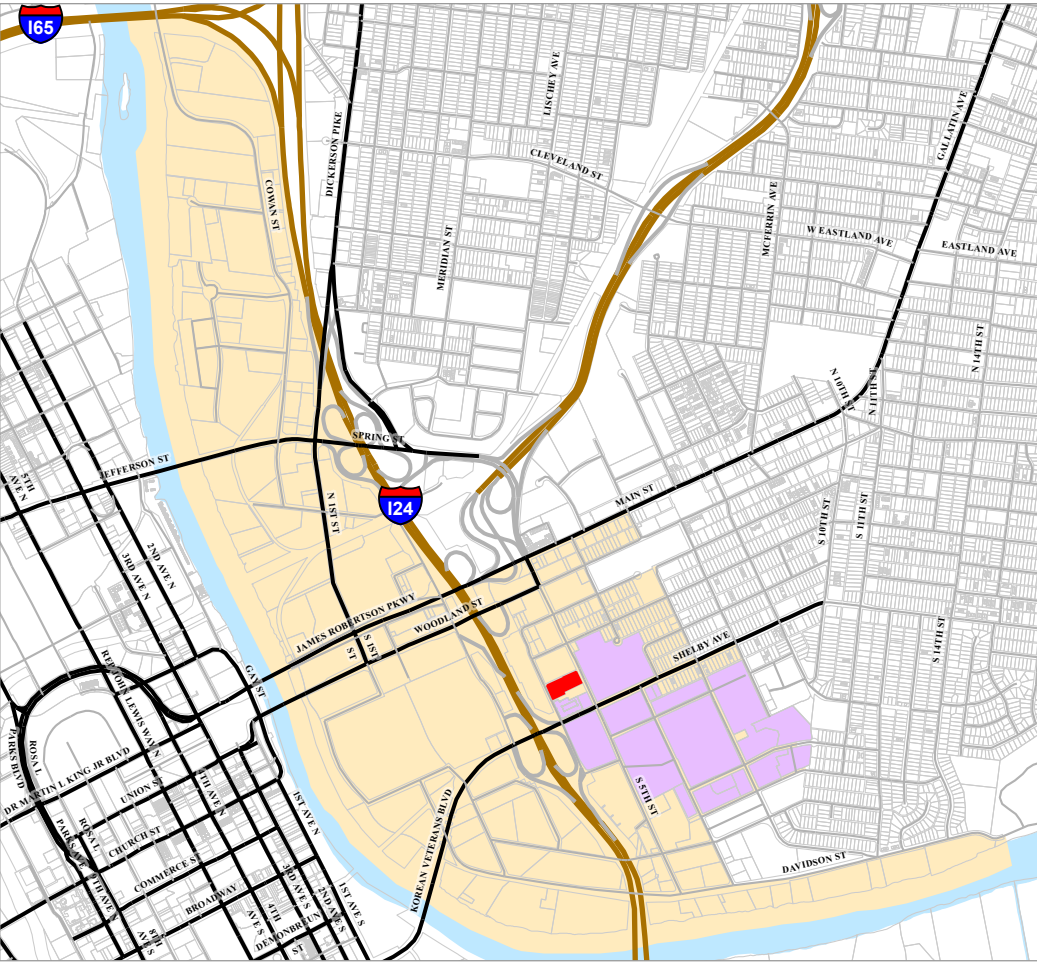
Address	Units	Address	Units
500 Shelby Ave	176	S. 5th Avenue & Summer PL	107
890 S. 6th St.	96	S.6th Street and Dew Street	45
800 S. 7th St.	102	700 Dew Street	102
779 S 6th St	93	200 South 4th Street	195




Source :  
 U.S Census Bureau &  
 Nashville Planning  
 July 2024





# Federally Subsidized Multi-Family Projects within Census Tract 47037019300



-  400 S 5th Street
-  Tract 47037019300
-  MDHA Parcels



Source :  
U.S Census Bureau &  
Nashville Planning  
July 2024

