

## PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 15 day of November, 2022, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and Birchstone Village, 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 616 N Dupont Avenue, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 228 unit apartment project, known as Birchstone Village, 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	\$53,407
2	\$55,009
3	\$56,659
4	\$58,359
5	\$60,110
6	\$61,913
7	\$63,771
8	\$65,684
9	\$67,654
10	\$69,684

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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 \$234 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.

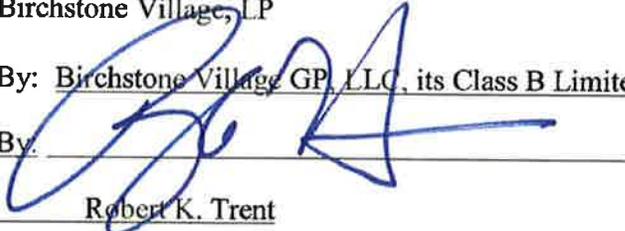
METROPOLITAN DEVELOPMENT AND HOUSING AGENCY

By: 

Title: Executive Director

Birchstone Village, LP

By: Birchstone Village GP, LLC, its Class B Limited Partner

By: 

Robert K. Trent

Title: President

FILED WITH THE METROPOLITAN CLERK

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

\_\_\_\_\_  
Date

## EXHIBIT A

### LEGAL DESCRIPTION

APPROXIMATELY 12.83 ACRES, BEING TAX PARCEL 04310012000, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT ONE:

BEING A CERTAIN TRACT OF LAND LYING IN THE NINTH COUNCIL DISTRICT OF MADISON, METROPOLITAN NASHVILLE, DAVIDSON COUNTY, TENNESSEE. SAID PARCEL IS LOCATED ON THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROUTE 45, NORTH 76 DEGREES 40 MINUTES WEST, 683 FEET FROM THE CENTERLINE INTERSECTION OF MCARTHUR DRIVE AND STATE ROUTE 45, AND BEING MORE PARTICULARLY DESCRIBED, BY METES AND BOUNDS, AS FOLLOWS:

BEGINNING AT AN IRON ROD (NEW) WITH A CAP STAMPED RAGAN-SMITH & ASSOCIATES, ON THE NORTH SIDE OF A CHAIN LINK FENCE, IN THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROUTE 45, AT THE SOUTHWESTERLY CORNER OF BIXLER FARMS, LLC, OF RECORD AS INSTRUMENT NUMBER 200702130018434, R.O.D.C.T. (REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE) AND BEING THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED PROPERTY;

THENCE, WITH SAID RIGHT-OF-WAY AND ALONG SAID FENCE, FOR THE NEXT THREE CALLS:

- 1) NORTH 84 DEGREES 30 MINUTES 37 SECONDS WEST, 405.06 FEET TO A CONCRETE HIGHWAY MONUMENT (OLD);
- 2) NORTH 79 DEGREES 14 MINUTES 41 SECONDS WEST, 265.92 FEET TO A CONCRETE HIGHWAY MONUMENT (OLD);
- 3) SOUTH 84 DEGREES 47 MINUTES 44 SECONDS WEST, 322.38 FEET TO AN IRON ROD (OLD), WITH CAP STAMPED, RAGAN-SMITH & ASSOCIATES, AT THE SOUTHEASTERLY CORNER OF OCTOBER HOMES, L.P., OF RECORD AS INSTRUMENT NUMBER 201002010007741, R.O.D.C.T.;

THENCE, LEAVING SAID RIGHT-OF-WAY WITH SAID OCTOBER HOMES, L.P., FOR THE NEXT FOUR CALLS:

- 1) NORTH 03 DEGREES 12 MINUTES 25 SECONDS WEST, 259.73 FEET TO AN IRON ROD (OLD), WITH CAP STAMPED, RAGAN-SMITH & ASSOCIATES;
- 2) NORTH 06 DEGREES 59 MINUTES 50 SECONDS EAST, 231.37 FEET TO AN IRON ROD (OLD), WITH CAP STAMPED, RAGAN-SMITH & ASSOCIATES;
- 3) SOUTH 83 DEGREES 01 MINUTES 05 SECONDS EAST, 49.50 FEET TO AN IRON ROD (NEW), WITH CAP STAMPED, RAGAN-SMITH & ASSOCIATES;

4) NORTH 07 DEGREES 01 MINUTES 59 SECONDS EAST, 236.95 FEET TO AN IRON ROD (OLD), WITH CAP STAMPED, RAGAN-SMITH & ASSOCIATES IN THE SOUTHERLY LINE OF FIRST CUMBERLAND PROPERTIES, INC., OF RECORD AS INSTRUMENT NUMBER 201509010088786, R.O.D.C.T., WHICH IS SHOWN AS LOT 4 ON THE PLAT ENTITLED, MADISON CHURCH OF CHRIST SUBDIVISION, OF RECORD AS INSTRUMENT NUMBER 201308290091466, R.O.D.C.T.;

THENCE, WITH SAID FIRST CUMBERLAND PROPERTIES, INC. AND SAID LOT 4 ALONG WITH LOT 5 OF SAID MADISON CHURCH OF CHRIST SUBDIVISION, SOUTH 83 DEGREES 00 MINUTES 11 SECONDS EAST, 320.19 FEET TO AN IRON ROD (OLD), WITH CAP STAMPED, RAGAN-SMITH & ASSOCIATES IN THE WESTERLY LINE OF MADISON SENIOR LIVING, LLC, OF RECORD AS INSTRUMENT NUMBER 201108310067648, R.O.D.C.T.;

THENCE, WITH SAID MADISON SENIOR LIVING, LLC, SOUTH 07 DEGREES 01 MINUTES 06 SECONDS WEST, 302.70 FEET TO AN IRON ROD (OLD), WITH CAP STAMPED, RAGAN-SMITH & ASSOCIATES;

THENCE, CONTINUING WITH SAID MADISON SENIOR LIVING, LLC, SOUTH 83 DEGREES 00 MINUTES 41 SECONDS EAST, 617.47 FEET TO AN IRON ROD (OLD), WITH CAP STAMPED, RAGAN-SMITH & ASSOCIATES IN THE WESTERLY LINE OF BIXLER FARMS, LLC, OF RECORD AS INSTRUMENT NUMBER 200702130018434, R.O.D.C.T.;

THENCE, WITH SAID BIXLER FARMS, LLC, SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 362.69 FEET TO THE POINT OF BEGINNING AND CONTAINING 471,669 SQUARE FEET OR 10.83 ACRES, MORE OR LESS.

TOGETHER WITH THE APPURTENANT EASEMENT RIGHTS CONTAINED IN EASEMENT AND MAINTENANCE AGREEMENT BETWEEN OCTOBER HOMES, L.P. AND BIXLER FARMS, LLC, DATED MARCH 1, 2010, OF RECORD IN INSTRUMENT NUMBER 20100317-0020036, REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE.

TRACT TWO:

BEING LOT NOS. 4 AND 5 ON THE FINAL PLAT OF MADISON CHURCH OF CHRIST SUBDIVISION LOTS 1-5, OF RECORD IN INSTRUMENT NO. 20130829-0091466, REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE, TO WHICH PLAT REFERENCE IS HERE MADE FOR A MORE DETAILED DESCRIPTION OF SAID LOT.

TRACT TWO BEING THE SAME PROPERTY CONVEYED TO FIRST CUMBERLAND PROPERTIES, INC. FROM MADISON CHURCH OF CHRIST BY WARRANT DEED OF RECORD IN INSTRUMENT NO. 20150901-0088786, REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE.

TRACTS I AND II CONSOLIDATED AND CONVEYED BY BIXLER FARMS, LLC, A TENNESSEE FOR PROFIT CORPORATION, TO FIRST CUMBERLAND PROPERTIES, INC., A TENNESSEE FOR PROFIT CORPORATION, BY QUITCLAIM DEED OF RECORD IN INSTRUMENT NO. 20210630-0088599, IN SAID REGISTER'S OFFICE.

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



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY  
Planning Department  
Metro Office Building  
800 President Ronald Reagan Way  
Nashville, Tennessee 37210  
615.862.7150  
615.862.7209

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# Memo

**To:** MDHA  
**From:** Metropolitan Nashville Planning Department  
**Date:** November 15, 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:** **Birchstone Village (616 N Dupont, Parcels 04310012000)**  
228 unit mixed income apartment community  
Serving residents earning between 0% AMI and 60% AMI

**Zoning:** Multi-Family Residential (RM20) is intended for single-family, duplex, and multi-family dwellings at a density of 20 dwelling units per acre.

**Policy:** T4 Urban Neighborhood Evolving (T4 NE) is intended to create and enhance urban residential neighborhoods that provide more housing choices, improved pedestrian, bicycle and vehicular connectivity, and moderate to high density development patterns with shallow setbacks and minimal spacing between buildings. T4 NE areas are served by high levels of connectivity with complete street networks, sidewalks, bikeways and existing or planned mass transit. T4 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 and block structure and proximity to centers and corridors.

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 comprised of one parcel approximately 12.86 acres located along the south side of N DuPont Avenue, west of McArthur Drive. The surrounding properties are zoned RM20 and Single-Family Residential (RS7.5) and have been developed with a mix of multi-family and single-family residential units.

The proposed plan includes 185 section 8 units and 43 nonsubsidized units for a 228 unit mixed income development. The development will serve residents earning between 0% and 60% AMI. The proposed units are garden style units. The site plan submitted with the application shows 6 detached structures across the site with a club house at the northeast portion of the site. Additional on site amenities include an 11,000 square foot clubhouse with a social service resource center providing resident programming and a playground and splashpad.

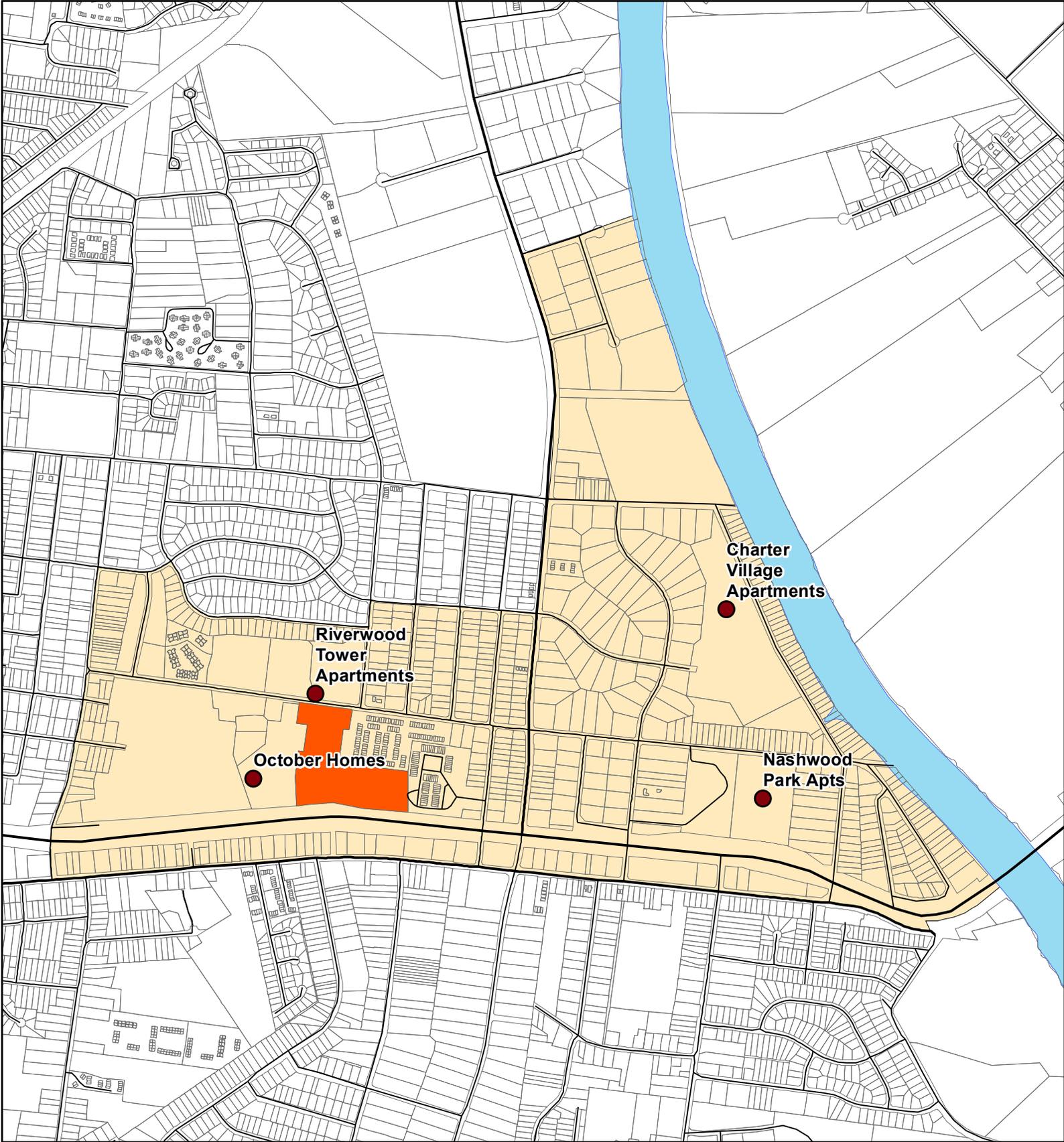
**Planning Department Analysis:** The primary policy on the site is Urban Neighborhood Evolving (T4 NE) is intended to create and enhance neighborhoods with greater housing choice, improved connectivity, and more creative, innovative, and environmentally sensitive development techniques. The proposed development is consistent with the goals to provide high density residential development and to improve connectivity with new sidewalks, a proposed WeGo Bus stop, as shown on the site plan, and cross access to the development to the west. The Conservation (CO) Policy is limited in area on the site due to some areas of steep slopes. These portions of the site are limited in area and not of significant concern to staff with the development of the site.

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

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

See attached map.

# Federally Subsidized Multi-Family Projects within Census Tract 47037010403



Low Income Tax Credit Project	# of Units
Charter Village Apartments	250
Nashwood Park Apts	100
October Homes	104
Riverwood Tower Apartments	117

- Low Income Tax Credit Project
- Parcels 04310012100

