

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 Fairgrounds Affordable Housing, 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 controls land located at 300 Rains 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 120 unit apartment project, known as Fairgrounds Site C, 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:

1	\$18,000
2	\$18,540
3	\$19,096
4	\$19,669
5	\$20,259
6	\$20,867
7	\$21,493
8	\$22,138
9	\$22,802
10	\$23,486

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 (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.

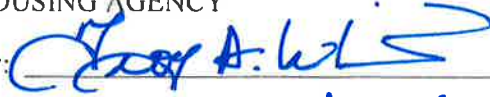
6. This PILOT Agreement shall be construed in accordance with the laws of the State of Tennessee, and if any one or more of the provisions of this PILOT Agreement shall be held invalid, illegal or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, legality 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

Fairgrounds Affordable Housing, LP

By: Fairgrounds AH GP, LLC

Its: General Partner

Name: Dirk Melton, President



FILED WITH THE METROPOLITAN CLERK

Elizabeth Waites

Date

EXHIBIT A

LEASE TRACT 8C DESCRIPTION

BEING A CERTAIN TRACT OF LAND IN THE 17TH COUNCIL DISTRICT OF METROPOLITAN NASHVILLE, DAVIDSON COUNTY, TENNESSEE. BEING PART OF THE SAME PROPERTY DEEDED TO METRO GOV'T M FAIR GROUNDS OF RECORD IN DEED BOOK 410, PAGE 385, REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE (R.O.D.C.T.) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CONCRETE MONUMENT (OLD) IN THE WESTERLY LINE OF SAID METRO GOV'T M FAIR GROUNDS PROPERTY AT THE SOUTHEASTERLY TERMINUS OF BENTON AVENUE, AND PROCEEDING AS FOLLOWS:

THENCE, SOUTH 75 DEGREES 00 MINUTES 05 SECONDS EAST, 713.03 FEET TO A 1/2 INCH IRON ROD (NEW) WITH A PLASTIC CAP STAMPED "RAGAN-SMITH ASSOCIATES" (TYPICAL) 80.75 FEET SOUTH OF THE SOUTHEASTERLY RIGHT OF WAY OF PROPOSED BENTON AVENUE (UNDER CONSTRUCTION), SAID IRON ROD BEING THE TRUE POINT OF BEGINNING AND THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE, CROSSING SAID METRO GOV'T M FAIR GROUNDS PROPERTY THE FOLLOWING NINE CALLS (1 THROUGH 9):

1. NORTH 74 DEGREES 13 MINUTES 36 SECONDS EAST, 83.12 FEET TO AN IRON ROD (NEW);
2. SOUTH 15 DEGREES 46 MINUTES 24 SECONDS EAST, 49.08 FEET TO AN IRON ROD (NEW);
3. NORTH 74 DEGREES 13 MINUTES 36 SECONDS EAST, 118.35 FEET TO AN IRON ROD (NEW);
4. NORTH 09 DEGREES 13 MINUTES 36 SECONDS EAST, 55.78 FEET TO AN IRON ROD (NEW);
5. SOUTH 80 DEGREES 46 MINUTES 24 SECONDS EAST, 80.09 FEET TO AN IRON ROD (NEW);
6. SOUTH 09 DEGREES 13 MINUTES 36 SECONDS WEST, 397.96 FEET TO AN IRON ROD (NEW);
7. SOUTH 15 DEGREES 45 MINUTES 55 SECONDS EAST, 183.89 FEET TO AN IRON ROD (NEW);
8. SOUTH 74 DEGREES 14 MINUTES 29 SECONDS WEST, 129.50 FEET TO AN IRON ROD (NEW);
9. NORTH 15 DEGREES 45 MINUTES 55 SECONDS WEST, 576.91 FEET TO THE POINT OF BEGINNING AND HAVING AN AREA OF 102,985 SQUARE FEET OR 2.36 ACRES, MORE OR LESS.



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: September 20, 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: **Fairgrounds (Parcel 10511030100)**
337 multi-family residential units
120 units rent (income and rent restricted at 60 percent AMI)

Zoning: Specific Plan-Mixed Use (SP-MU) 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 was approved in 2018 to create a mixed-use development. This includes residential uses in addition to office and/or commercial uses. The site is also located within the Urban Zoning Overlay (UZO).*

Policy: T4 Urban Community Center (T4 CC) is intended to maintain, enhance and create urban community centers that contain commercial, mixed use, and institutional land uses, with residential land uses in mixed use buildings or serving as a transition to adjoining Community Character Policies. T4 Urban Community Centers serve urban communities generally within a 5 minute drive or a 5 to 10 minute walk. T4 CC areas are pedestrian friendly areas, generally located at intersections of prominent urban streets. Infrastructure and transportation networks may be enhanced to improve pedestrian, bicycle, and vehicular connectivity.

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 bounds of the SP zoning encompass 128 acres located south of Wedgewood Ave. The preliminary SP identified three mixed-use blocks, across 10 acres, located north of and between the speedway and

stadium: A, B, and C. Block C, approximately 2.4 acres of the total site, is located south of blocks A and B, on the south side of Benton Avenue, and between the stadium and the speedway.

The proposed plan is to construct a 337 unit mixed-income housing structure in the area identified on the plan as Block C. The LIHTC component of the structure will include 33 studio units, 68 one-bedroom units, 14 two-bedroom units, and 5 three-bedroom units for a total of 120 units. All units will be subject to income and rent restrictions. The average income restriction will be no greater than 60 percent of area median income (AMI).

Planning Department Analysis: The intent of the SP zoning on the site is to create and enhance development within the larger Fairgrounds area and to provide a mix of uses, including non-residential uses and residential uses.

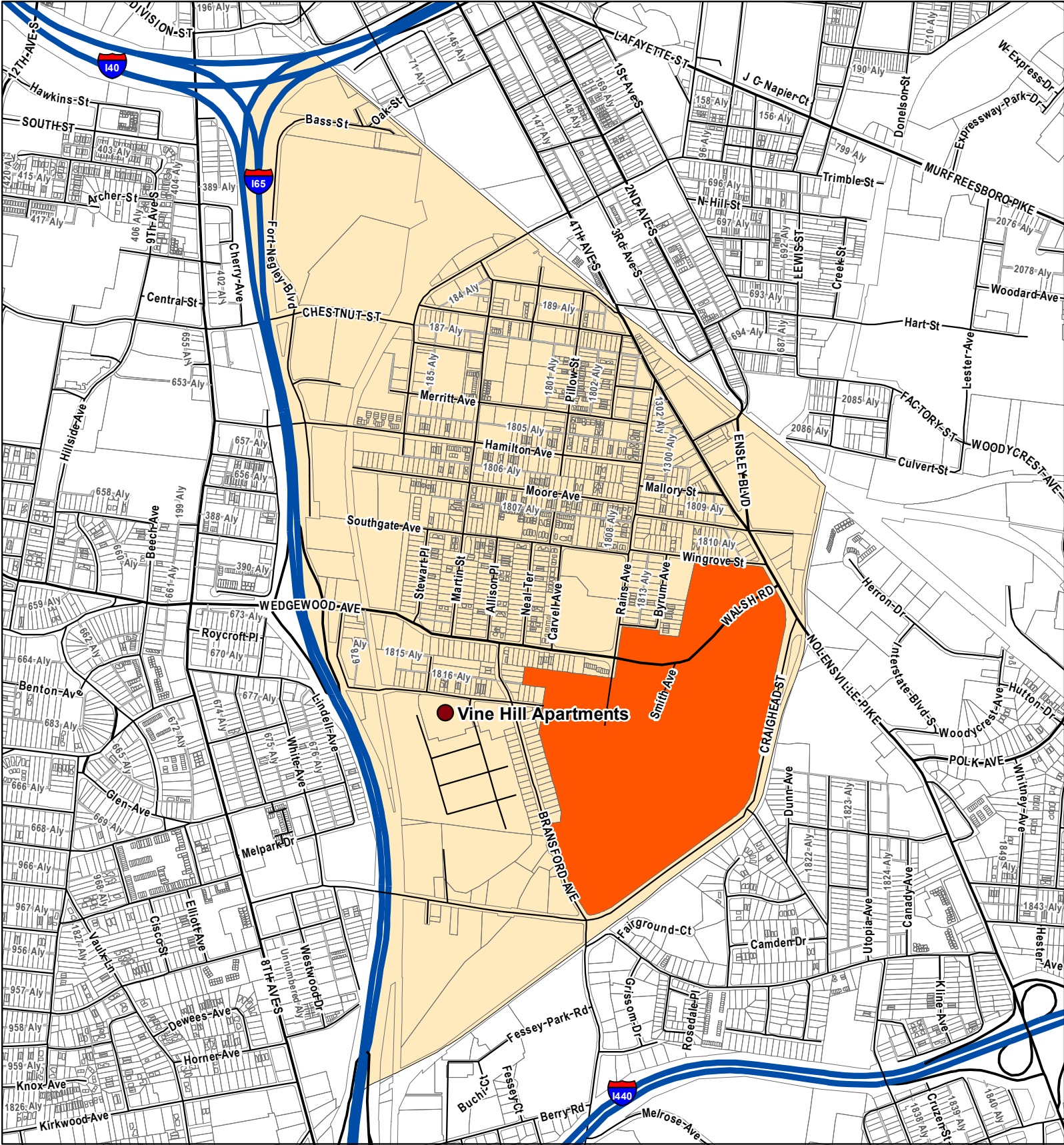
The Block C area of the site is located within the Urban Community Center (T4 CC) policy area which is intended to maintain, enhance, and create urban community centers. Block C is located off the corridor, and internal to the SP site, making it appropriate for a residential structure. The intensity proposed is consistent with the policy's intent to provide high density residential development near existing services and in central locations within the city.

Planning Determination: This project is consistent with the NashvilleNext adopted general plan and the Community Character Policies on the site.



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

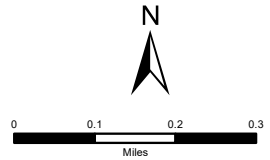
See attached map.

Federally Subsidized Multi-Family Projects within Census Tract 47037016100



Low Income Tax Credit Project	# of Units
Vine Hill Apartments	136

 Low Income Tax Credit Project
 Parcel 10511030100



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: _____