

## PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 26 day of January, 2024, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and Hickory Housing I, LLC (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 500 Ocala Drive, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to rehabilitate a 90 unit apartment project, known as Hickory Forest 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) 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	\$56,400
2	\$58,092
3	\$59,835
4	\$61,630
5	\$63,479
6	\$65,383
7	\$67,345
8	\$69,365
9	\$71,446
10	\$73,589

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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 \$627 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

BEING a parcel of land in the First Civil District of Nashville, Davidson County, Tennessee, located at the terminus of Ocala Drive west of Nolensville Road being Reserve Parcel "C", as shown on the Plan of Greenleaf Heights of record in Plat Book 5200, page 260, R.O.D.C. and being more particularly described as follows:

BEGINNING at a point in the terminus of Ocala Drive, said point being 1508 feet, more or less, west of the west margin of Nolensville Road being the southeast corner of herein described tract and in the north line of Resubdivision of Lot One, Hickory View Commercial Park of record in Plat Book 9700, page 981, R.O.D.C.;

THENCE, leaving Ocala Drive with the north line of said Hickory View Commercial Park, South 80 degrees, 43 minutes, 36 seconds West, 269.22 feet to an iron pin;

THENCE with the north line of Consolidation Plat, Hickory Point Subdivision of record in Instrument No. 200406100069045, R.O.D.C., South 80 degrees, 48 minutes 17 seconds West, 552.41 feet to an iron pin;

THENCE with the east line of Section 2, McMurray Woods of record in Plat Book 4660, page 43, R.O.D.C., North 08 degrees 08 minutes 27 seconds East, 191.19 feet to a concrete monument;

THENCE, with the east line of Section One, McMurray Woods of record in Plat Book 4675, page 6, R.O.D.C., North 6 degrees 18 minutes 40 seconds East, 300.31 feet to an iron pin;

THENCE with the south line of Greenleaf Heights, Phase II of record in Plat Book 6900, page 762, R.O.D.C. and Resubdivision of Reserve Parcel "B", Greenleaf Heights of record in Plat Book 5200, page 665, R.O.D.C., North 68 degrees 19 minutes 35 seconds East, 727.99 feet to an iron pin;

THENCE with the west line of Hickory Woods Apartments of record in Book 8306, page 727, R.O.D.C., South 18 degrees 20 minutes 59 seconds East, 119.94 feet to an iron pin;

THENCE South 27 degrees 31 minutes 14 seconds East, 252.96 feet to a point;

THENCE South 52 degrees 04 minutes 50 seconds West, 185.88 feet to an iron pin;

THENCE South 44 degrees 10 minutes 21 seconds East, 160.04 feet to a point in the north margin of Ocala Drive;

THENCE with said margin South 45 degrees 49 minutes 39 seconds West, 46.63 feet to a point;

THENCE with a curve concave to the south having a central angle of 40 degrees 43 minutes 48 seconds, a radius of 40.00 feet and a chord of South 24 degrees 48 minutes 29 seconds West, 27.84 feet for an arc length of 28.44 feet to the point of BEGINNING.

Being the same property conveyed to Hickory Forest II, L.P., a Tennessee limited partnership by Special Warranty Deed from Hickory Forest, LTD., a Tennessee limited partnership of record in Instrument No. 20061108-0139113, Register's Office for Davidson County, Tennessee, dated November 7, 2006 and recorded on November 8, 2006. (Value of consideration shown in aforementioned deed \$3,700,000.00.)

Being the same property conveyed to Hickory Forest II, L.P., a Tennessee limited partnership by Quitclaim Deed from Hickory Forest LTD., a Tennessee limited partnership, of record in Instrument No. 20061108-0139114, Register's Office for Davidson County, Tennessee, dated November 7, 2006 and recorded on November 8, 2006. (Value of consideration shown in aforementioned deed \$0.00.)

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# 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:** January 9, 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:** **Hickory Forest Apartments (06100013600, 500 Ocala Drive)**  
90 multi-family units  
Units targeting 60% AMI and below

**Zoning:**

Residential Multi Family (RM15) is intended for single-family, duplex, and multi-family dwellings at a density of 15 dwelling units per acre.

Planned Unit Development Overlay District (PUD) is an alternative zoning process that allows for the development of land in a well-planned and coordinated manner, providing opportunities for more efficient utilization of land than would otherwise be permitted by the conventional zoning provisions of Title 17. The PUD district may permit a greater mixing of land uses not easily accomplished by the application of conventional zoning district boundaries, or a framework for coordinating the development of land with the provision of an adequate roadway system or essential utilities and services. In return, the PUD district provisions require a high standard for the protection and preservation of environmentally sensitive lands, well-planned living, working and shopping environments, and an assurance of adequate and timely provision of essential utilities and streets.

**Policy:**

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 10.02 acres located at the terminus of Ocala Drive, west of Nolensville Road. Surrounding properties are zoned Multi Family Residential (RM15), One and Two-Family Residential (R6) & One and Two Family (R10),, and a SP allowing multi family. Surrounding land uses include single-family residential, multi-family residential, and vacant properties.

The site plan consists of 9 three story multi-family buildings and surface parking. The development includes rehabilitation of 90 multi-family units consisting of 25 one-bedroom, and 65 two-bedroom units. Rents are restricted for individuals making 60% AMI.

**Planning Department Analysis:**

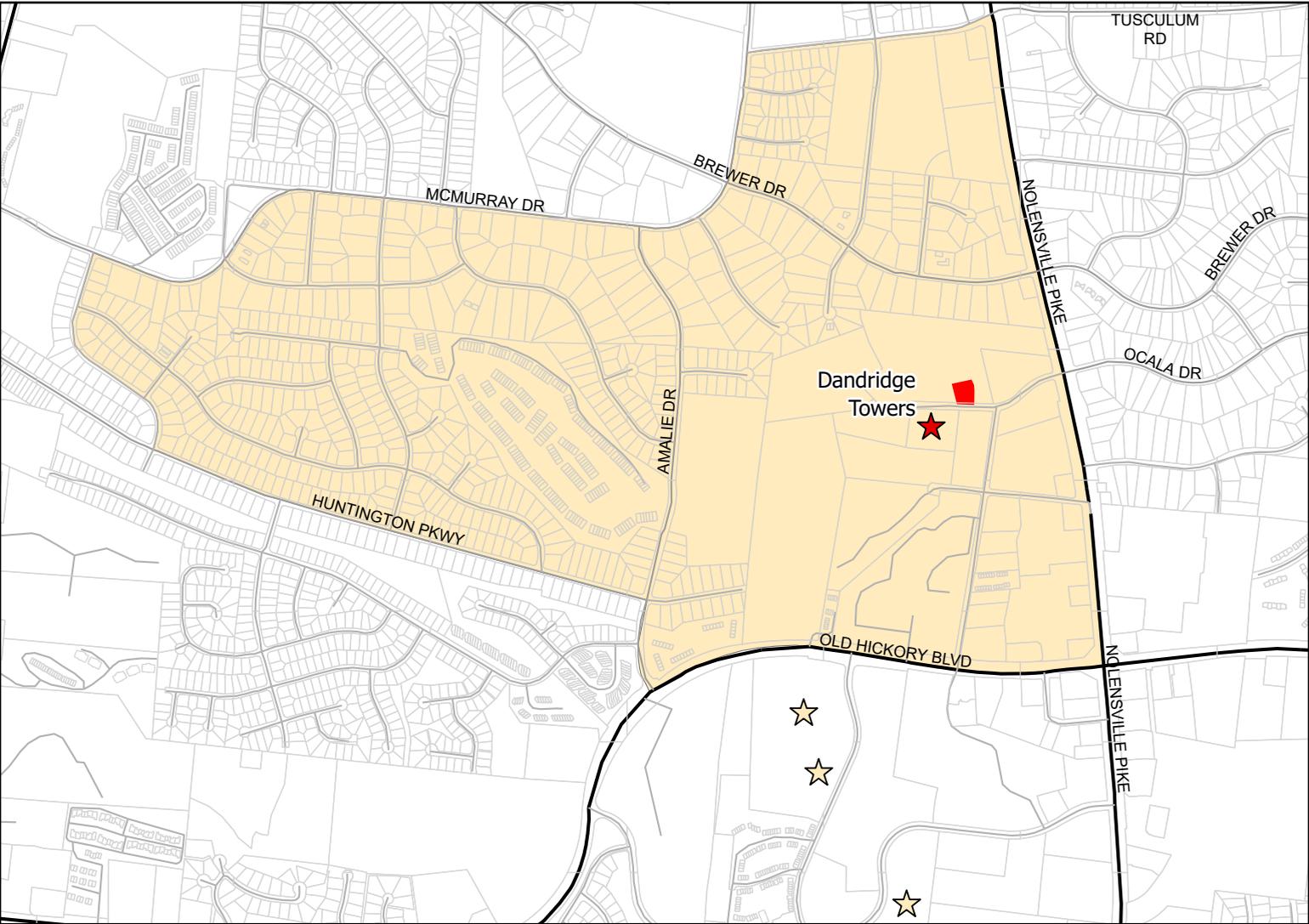
There are two policies on the site: Suburban Neighborhood Evolving (T3 NE) and Conservation (CO). The T3 NE policy goals include providing development at a suburban level with greater housing choice, environmentally sensitive development techniques, and improved connectivity. The proposed development is an existing housing complex that is part of the area's current mix of housing options. The Conservation (CO) policy on the site is in place due to slopes and tree stands, both of which are undisturbed by the existing development and will not be affected by rehabilitation of the complex.

**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 47037019105



- Hickory Forest
- Tract 47037019105
- ★ Federal affordable housing in tract
- ★ Other federal affordable housing units

Development Name	Units
Dandridge Towers	154

Source: U.S Census Bureau |  
Metro Nashville Planning |  
January 2024



0.6

