

## **PILOT AGREEMENT**

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 21st day of April, 2021, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and APP Riverwood Partners, LLLP (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 a contract to acquire land located at 621 North Dupont Avenue, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to acquire and rehabilitate a 117 unit apartment project, known as Rverwood Tower, 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	\$57,389
2	\$59,111
3	\$60,884
4	\$62,711
5	\$64,592
6	\$66,530
7	\$68,525
8	\$70,581
9	\$72,699
10	\$74,880

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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 \$491 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.

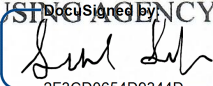
6. This PILOT Agreement shall be construed in accordance with the laws of the State of Tennessee, and if any one or more of the provisions of this PILOT Agreement shall be held invalid, illegal or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, legality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

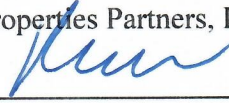
IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and date first above written.

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY

By:  \_\_\_\_\_  
2F3CD0654D9344D  
Interim  
Title: Executive  
Director

APP Riverwood Partners, LLLP

By: Alco Properties Partners, LLC, its general partner

By:  \_\_\_\_\_  
Title: Robert D. Hyde, President

FILED WITH THE METROPOLITAN CLERK

\_\_\_\_\_  
Elizabeth Waites

\_\_\_\_\_  
Date

**EXHIBIT A**

**SURVEYOR'S DESCRIPTION:**

Description of the Madison View Towers property recorded in Book 5197, Page 156 in Madison, Davidson County, Tennessee:

Beginning at a point in the north line of North Dupont Avenue (50' R.O.W.), said point being the west end of a curve having a radius of 25.00 feet located 26.25 feet west of the tangent intersection of the north line of said North Dupont Avenue and the west line of May Drive (50' R.O.W.); thence north 82 degrees 22 minutes 00 seconds west with the north line of said North Dupont Avenue, 407.75 feet to a set 1/2" rebar with plastic cap in the east line of the Dupont Associates, LTD property recorded in Book 5894, Page 959; thence in a northerly direction with the east line of said property recorded in Book 5894, Page 959 the following calls: north 07 degrees 38 minutes 00 seconds east, 92.00 feet to a found rebar; north 13 degrees 39 minutes 30 seconds west, 79.11 feet to a found rebar; north 04 degrees 56 minutes 57 seconds east, 299.75 feet to a found rebar; north 43 degrees 48 minutes 30 seconds west, 50.03 feet to a point in the south line of Lot 248 of Section 8, Madison Park Subdivision recorded in Book 4300, Page 117 (found rebar located 0.65 feet west of corner); thence in an easterly direction with the south line of Lots 248 through 254 of said subdivision recorded in Book 4300, Page 117 the following calls: south 85 degrees 00 minutes 30 seconds east, 304.04 feet to a cyclone fence corner post; north 64 degrees 36 minutes 46 seconds east, 80.98 feet to a found rebar; south 85 degrees 10 minutes 49 seconds east, 117.14 feet to a set 1/2" rebar with plastic cap in the west line of the aforesaid May Drive; thence south 04 degrees 50 minutes 50 seconds west with the west line of said May Drive, 534.62 feet to a point of curvature; thence in a southwesterly direction along a curve to the right having a radius of 25.00 feet, delta angle of 92 degrees 47 minutes 10 seconds, chord = south 51 degrees 14 minutes 25 seconds west - 36.20 feet, an arc length of 40.49 feet to the Point of Beginning and containing 234,774 square feet or 5.390 acres of land.

This being the same property described in Exhibit A of Fidelity National Title Insurance Company Commitment No. 7401584, dated February 26, 2020.

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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:** April 7, 2021  
**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:** **Riverwood Tower (Parcel 04310009600)**  
117 multi-family residential units  
All units rented to low income elderly residents

**Zoning:** Residential Multi-Family (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.

### **Project Details:**

The site is approximately five acres and is located at the northwest corner of N. Dupont Avenue and May Drive. The site has been developed with a six-story multi-family structure. The structure contains 117 one-bedroom units. The structure is oriented to N. Dupont Avenue and is located in the center of the site with surface parking located between N. Dupont Avenue and the structure. There are two vehicular entrances to the site, one on each street frontage.

The applicants propose to rehabilitate the existing structure and units to renovate kitchens and bathrooms, increase accessibility for residents with disabilities, and improve indoor and outdoor community spaces. All 117 units are covered by Section 8 HAP rental assistance contracts which allows residents to pay no more than thirty percent of their adjusted income towards rent.



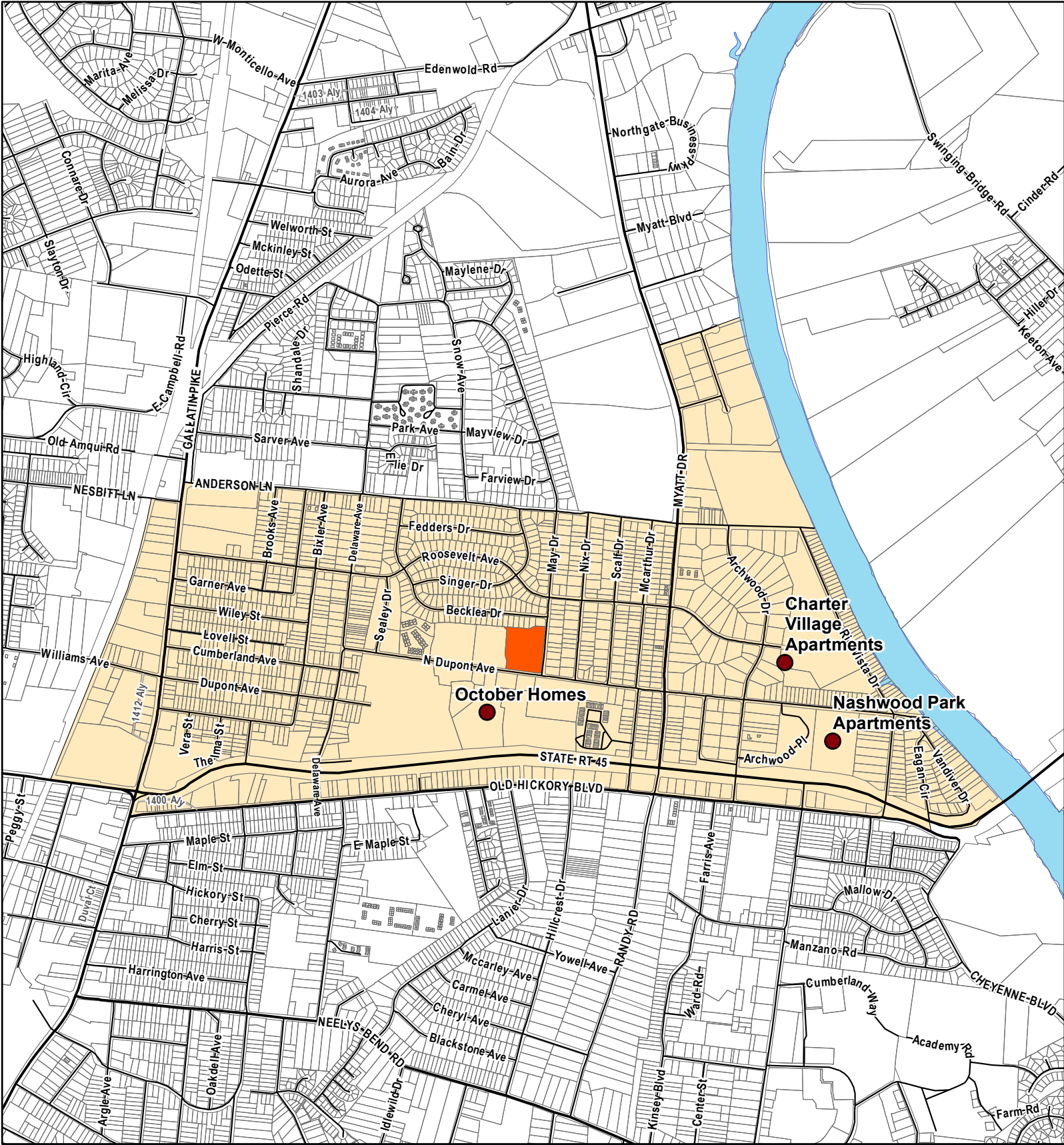
**Planning Department Analysis:** Multi-family residential is a permitted use within the zoning district and supported by the policy on the site. The policy on the site is Suburban Neighborhood Evolving (T3 NE). The intent of this policy is to create and enhance suburban neighborhoods with higher densities and greater housing variety than classic suburban neighborhoods. The rehabilitation of the existing structure and all units will provide existing and future residents with updated facilities and amenities while preserving existing affordable housing units.

**Planning Determination:** The proposed renovation of the existing multi-family structure and units on the site is consistent with the policies on site to maintain and enhance the existing residential development. 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 47037010402



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

- Low Income Tax Credit Project
- Parcel 04310009600



# 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: APP Riverwood Partners, LLLP

Project Name: Riverwood Tower

Location of the Project: 621 North Dupont Avenue

Nashville, Tennessee

Name of the Federal Program to which the applicant is applying: 9% LIHTC

Name of Certifying Jurisdiction: MDHA

Certifying Official of the Jurisdiction Name: Emel Alexander

Title: Director of Community Development

Signature: 

Date: 4/20/21