

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the _____ day of June, 2018, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and Nashville Leased Housing Associates I, Limited Partnership (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 or about 3474 Dickerson Pike, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct an approximately 261 unit apartment project, known as the Preserve at Highland Ridge, 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:

Tax Year	In-Lieu of Tax Payment
1	\$22,765
2	\$23,903
3	\$25,098
4	\$26,353
5	\$27,671
6	\$29,054
7	\$30,507
8	\$32,032
9	\$33,634
10	\$35,316

Subject to Section 1(e) below, the In Lieu of Tax Payments from Tax Year 1 through Tax Year 10 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 \$87 per unit within the Project, with a five percent (5%) 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, 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 (authorized June __, 2018 by MDHA) 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: _____

NASHVILLE LEASED HOUSING ASSOCIATES I, LIMITED PARTNERSHIP

By: Nashville Leased Housing Associates I, LLC

Its: General Partner

By: _____

Title: _____

FILED WITH THE METROPOLITAN CLERK

Elizabeth Waites

Date

EXHIBIT A

Tract I

Land in the 12th Civil District of Davidson County, Tennessee, on the westerly side of Dickerson Pike, being more fully described as follows:

Beginning at a point in the westerly right-of-way of Dickerson Pike, said point being the Southeast corner of Lot #3 of twenty-three (23) acres described in Book 5382, Page 476, R.O.D.C.

Thence with the Southerly margin of Lot #3 South 86°05'02" West, 300 feet to an iron pin;

Thence leaving the said margin of Lot #3 North 17°01'10" West, 200 feet to an iron pin;

Thence North 86°05'02" East, 300 feet to an iron pin in the Westerly margin of Dickerson Pike;

Thence with said Westerly Margin South 17°01'10" East, 200 feet to the point of beginning.

The above described tract contains 1.38 acres, more or less.

Being the same property conveyed to DAVID R. HEMPHILL AND WIFE, LEAH J. HEMPHILL, by deed from JOEL W. HEMPHILL AND WIFE, LABREESKA R. HEMPHILL, of record in Book 5650, Page 143, dated September 8, 1980, said Register's Office.

Tract II

A certain tract or parcel of land in Davidson County, Tennessee, described as follows:

BEGINNING at a point on the centerline of Dickerson Pike, said point being the southeast corner of Lot 3 of 23 acres, and the northeast corner of Lot 4 of 23 acres, 112 poles, both lots being part of the James Sanders Lands; thence along the center line of the Dickerson Pike North 11° West 51.5 poles (849.75 feet) to a point; thence, North 67° West 3 1/2 poles; thence, West 68 poles along the north line of Lot 3 and the south line of the land owned by McGee, 1122 feet to a point at the northwest corner of Lot 3; thence, North 1 3/4° East 28.02 poles (462.33 feet) to a point; thence, North 88 1/2° West 56.84 poles (937.86 feet) and along the southerly line of George Newlin lands to a stake in the south line of George Newlin lands and north line of W. R. Sanders lands, said point being 28.4 poles (458.6 feet) from a stone on west side of small branch, which stone marks the northwest corner of a 27 acre tract lying westerly of the property herein conveyed; thence, South 17 1/2° East 100.2 poles to a walnut tree, said tree being the southwest corner of the land herein conveyed; thence, South 39° 50' East 22.4 poles (360.6 feet) to a black walnut pointer; thence, North 1 1/2° East 14.6 poles (240.0 feet) to a point; thence, East 31 1/2 poles (519.75 feet) to the Dickerson Pike, the point of beginning.

Being the same property conveyed to ANCHOR PROPERTY HOLDINGS, LLC, A TENNESSEE LIMITED LIABILITY COMPANY by deed from WILLIAM J. SUDEKUM, SR. of record in Instrument No. 20050105-0001691, dated January 3, 2005, said Register's Office.

INCLUDED in the above description but specifically excluded therefrom are the following tracts:

Tract 1: Land conveyed to Howard McGee and wife, Ida McGee by deed of record in Book 1783, Page 549, said Register's Office.

Tract 2: Land conveyed to David R. Hemphill and wife, Leah J. Hemphill by deed of record in Book 5650, Page 143, said Register's Office.

Tract 3: Land conveyed to Hamilton Test Systems, Inc. by deed of record in Book 8221, Page 566, said Register's Office.

Tract 4: Land conveyed to G & W Door Company, Inc. d/b/a Overhead Door Co. of Nashville by deed of record in Book 9595, Page 809, said Register's Office.

Tract 5: Land conveyed to William C. Diemer, III and Larry D. Wiley of record in Book 10030, Page 387, said Register's Office.



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: March 30, 2018
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: **Preserve at Highland Ridge (3474 Dickerson Pike)**
267 multi-family residential units
All units proposed affordable to households earning below 60% 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 includes residential uses in addition to commercial uses.

Land Use Policy: Conservation (CO) policy is intended to preserve environmentally sensitive land features through protection and remediation.

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 Suburban Mixed Use Corridor (T3 CM) is intended to enhance suburban mixed use corridors by encouraging a greater mix of higher density residential and mixed use development along the corridor.

Project Details: This site consists of two parcels, both with frontage on Dickerson Pike. The plan includes 267 multi-family residential units within 8 buildings. These buildings will have a 3/4 story split. Site amenities include a clubhouse, pool, bike center, playground, covered surface parking spaces, and an overlook area. Internal sidewalks connect each multi-family residential structure to site amenities except Building H, fronting Dickerson Pike. Primary access is from Dickerson Pike at the southeastern site boundary. A secondary point of access that connects this site with adjacent commercial uses is located between Buildings E and D.

Major and Collector Street Plan: The plan proposes a sidewalks 12 feet in width and a planting strip 8 feet in width along site frontage on Dickerson Pike. Proposed sidewalk improvements are consistent with Major and Collector Street Plan standards.

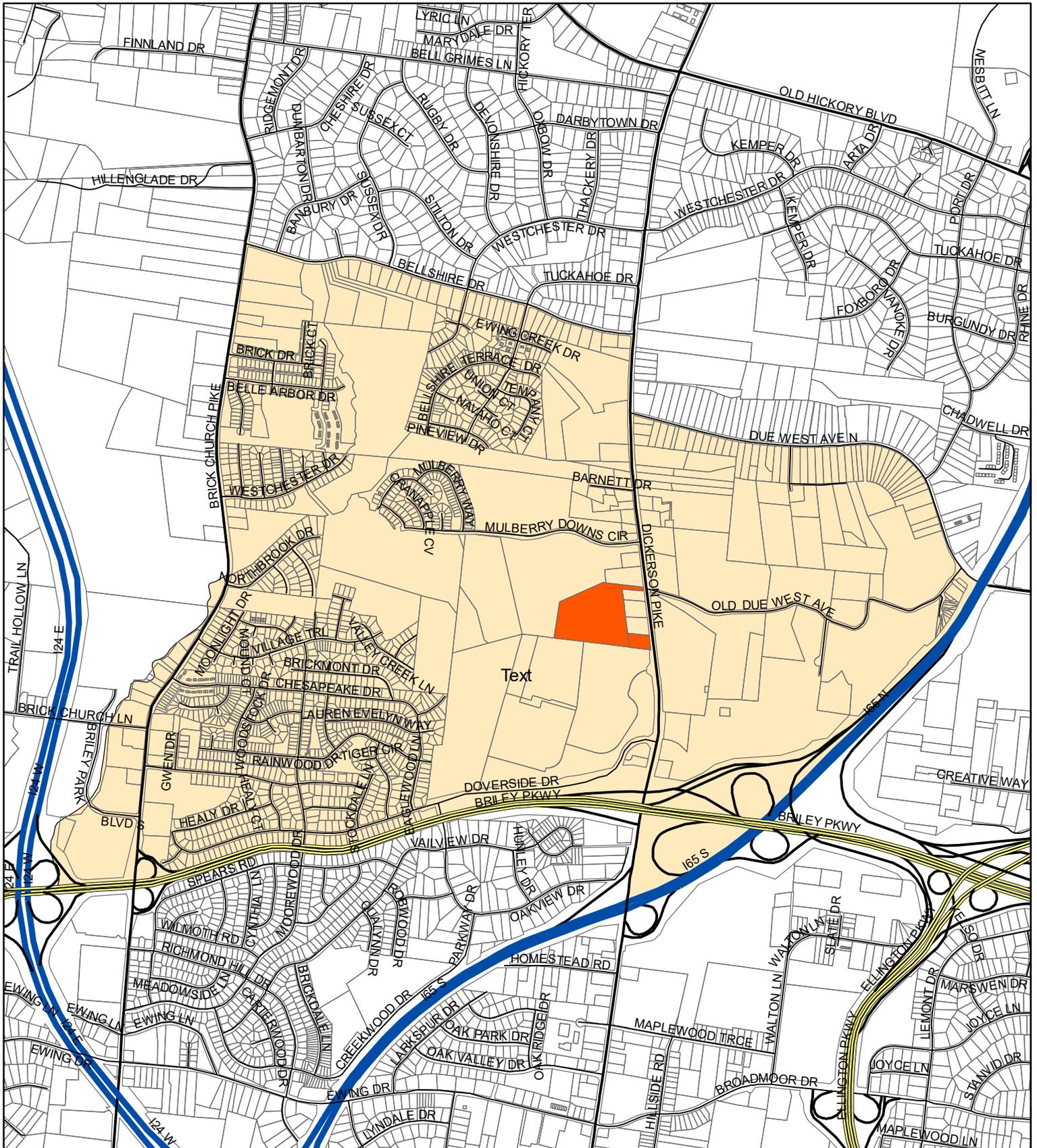
Planning Department Analysis: The proposal is for a maximum of 267 multi-family residential units and is located on Dickerson Pike, an arterial-boulevard, which is identified for future high capacity transit. This development will provide site users access to existing transit service through nearby bus stops located within the parking lot of abutting commercial uses, on Dickerson Pike at Doverside Drive and on Dickerson Pike at Mulberry Downs Circle. Residents will also have access to nearby commercial services within the adjacent development. This proposal orients development away from environmentally sensitive portions of the site that which contain the steepest slopes and a stream buffer. Multi-family residential is an appropriate use at this site as it is consistent with policy and site users will have access to nearby commercial uses and will support existing transit service on Dickerson Pike.

Planning Determination: The proposed development is consistent with T3 Suburban Neighborhood Evolving, T3 Suburban Mixed Use Corridor policy and Conservation policies of the Nashville Next general plan. This development will provide opportunities for additional housing choice and improved pedestrian, bicycle and vehicular connectivity within the surrounding area.

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

See attached map.

Federally Subsidized Multi-Family Projects within Census Tract 047037010903



- Low Income Tax Credit Project
- Map 50, Parcels 048 and 105



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: Nashville Leased Housing Associates I, LP

Project Name: Preserve at Highlands

Location of the Project: 3474 Dickerson Pike

Nashville, TN 37207

Name of the Federal Program to which the applicant is applying: 4% LIHTC

Name of Certifying Jurisdiction: MDHA

Certifying Official of the Jurisdiction Name: Angela Hubbard

Title: Director of Community Development

Signature: 

Date: 5/31/18