

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the ____ day of November, 2016, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and ECG HERMITAGE, 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 has contracted to purchase land located at 5646 Old Hickory Boulevard, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, upon closing of its purchase of the Project Site, Owner intends to construct an approximately 266-unit garden style apartment project, known as Hermitage Flats, on the Project Site and operated 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 thirty (30) 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 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 construction of the Project is completed (“**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	\$37,500
2	\$37,500
3	\$38,625
4	\$39,784
5	\$40,977
6	\$42,207
7	\$43,473
8	\$44,777
9	\$46,120
10	\$47,504

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 \$141 per unit within the Project, with a three percent (3%) annual increase commencing with the third Tax Year. 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 November ____, 2016 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: _____

ECG HERMITAGE, LP

By: _____

Title: _____

FILED WITH THE METROPOLITAN CLERK

Shannon B. Hall

Date

EXHIBIT "A"

(page 1 of 2 pages)

Being a parcel of land in the Second Civil District of Nashville, Davidson County, Tennessee, and being more particularly described according to a boundary survey made by Barge, Waggoner, Sumner & Cannon, Surveyors, dated October 16, 1987 as follows:

Being a tract of land in the Second Civil District of Nashville and Davidson County, Tennessee, and described more fully as follows:

BEGINNING at an iron pin in the easterly margin of Raintree Drive, said pin being South 85 degrees 11 minutes 51 seconds East, 191.27 feet easterly of a concrete monument in the easterly margin of Hermitage Woods Drive; THENCE, with the easterly margin of Raintree Drive, the following calls:

With a curve to the right 104.74 feet to an iron pin, said curve having a central angle of 09 degrees 24 minutes 47 seconds, a radius of 637.30 feet, a tangent of 52.49 feet and a chord of North 05 degrees 50 minutes 22 seconds East, 104.62 feet;

With a curve to the left 139.78 feet to an iron pin, said curve having a central angle of 11 degrees 17 minutes 05 seconds, a radius of 709.68 feet, a tangent of 70.12 feet and a chord of North 07 degrees 07 minutes 01 seconds East, 139.55 feet;

With a curve to the left 82.89 feet to an iron pin, said curve having a central angle of 46 degrees 19 minutes 58 seconds, a radius of 102.50 feet, a tangent of 43.86 feet and a chord of North 22 degrees 50 minutes 03 seconds West, 80.65 feet;

With a curve to the left 62.73 feet to an iron pin, said curve having a central angle of 18 degrees 11 minutes 49 seconds, a radius of 197.50 feet, a tangent of 31.63 feet, and a chord of North 55 degrees 05 minutes 59 seconds West, 62.46 feet;

THENCE, leaving said easterly margin North 57 degrees 18 minutes East, 103.11 feet to an iron pin;

THENCE with the westerly line of Hermitage Woods of record in Book 4860, Page 62, R.O.D.C., the following calls:

South 55 degrees 48 minutes East, 56.00 feet to an iron pin; South 28 degrees 18 minutes East, 279.00 feet to an iron pin; South 37 degrees 27 minutes East, 172.00 feet to an iron pin; South 04 degrees 42 minutes West, 31.50 feet to an iron pin; with the southerly line of Hermitage Woods of record in Book 4860, Page 62, R.O.D.C., South 85 degrees 18 minutes East, 99.21 feet to an iron pin in the westerly line of the property conveyed to D. R. Pirtle by deed of record in Book 5155, Page 150, R.O.D.C.;

THENCE with said westerly line, South 04 degrees 42 minutes West, 638.42 feet to an iron pin in the westerly line of the property conveyed to Durning Tree Associates, Ltd. by deed of record in Book 5193, Page 816, R.O.D.C.;

THENCE with said westerly line, South 05 degrees 48 minutes West, 447.89 feet to an iron pin in the northeasterly margin of Old Hickory Boulevard;

THENCE with said northeasterly margin with a curve to the left, 328.34 feet to an iron pin, said curve having a central angle of 06 degrees 31 minutes 12 seconds, a radius of 2,885.32 feet, a tangent of 164.35 feet and a chord of North 28 degrees 51 minutes 08 seconds West, 328.16 feet;

THENCE continuing with said northeasterly margin North 32 degrees 06 minutes 44 seconds West, 827.80 feet to an iron pin;

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THENCE continuing with said northeasterly margin with a curve to the right 75.00 feet to an iron pin in the southeasterly margin of Hermitage Woods Drive, said curve having a central angle of 85 degrees 56 minutes 37 seconds, a radius of 50.00 feet, a tangent of 46.58 feet and a chord of North 10 degrees 51 minutes 50 seconds East, 68.16 feet;

THENCE with said southeasterly margin with a curve to left 118.71 feet to a concrete monument, said curve having a central angle of 23 degrees 26 minutes 33 seconds, a radius of 290.14 feet, a tangent of 60.20 feet and a chord of North 42 degrees 06 minutes 52 seconds East, 117.88 feet;

THENCE leaving said southeasterly margin, South 85 degrees 11 minutes 51 seconds East, 191.27 feet to the point of beginning.

Containing 492,231 square feet of 11.30 acres, more or less.

Being the same property conveyed to the Grantors by deed of record in Book 7633, Page 68, Register's Office of Davidson County, Tennessee.

Included in the above described property, but excluded from this conveyance is property condemned from Grantors by the Tennessee Department of Transportation; said property being known as Tract 17, and being part of the State Project 19008-2153-44, Federal Project BR-40-5(87)221. The description of same follows:

Beginning at a concrete monument in the southeasterly margin of Hermitage Woods Drive, THENCE South 85 degrees 11 minutes 51 seconds East, a distance of 52 feet, THENCE South 02 degrees 47 minutes 24 seconds East 130 feet; THENCE South 11 degrees 58 minutes 26 seconds West 87.993 feet; THENCE South 61 degrees 31 minutes 29 seconds West 100 feet to a point in the east margin of S.R. 45 (Old Hickory Boulevard); THENCE northwesterly with said margin 125 feet; THENCE with a curve to the right 75 feet to an iron pin in the southeasterly margin of Hermitage Woods Drive, said curve having a central angle of 85 degrees 56 minutes 37 seconds, a radius of 50 feet, a tangent of 46.58 feet and a chord of North 10 degrees 51 minutes 50 seconds East, 68.16 feet, THENCE with a curve to the left 118.71 feet to the point of beginning at a concrete monument in the southeasterly margin of Hermitage Woods Drive, said curve having a central angle of 23 degrees 26 minutes 33 seconds, a radius of 290.14 feet, a tangent of 60.20 feet and a chord of North 42 degrees 06 minutes 52 seconds East, 117.88 feet. Said property containing 0.652 acre, 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: October 25, 2016
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: **Hermitage Flats (5646 Old Hickory Boulevard)**
266 multi-family units - Awarded LIHTC (THDA)
All units proposed affordable to households earning below 60% AMI

Zoning: MUL (Mixed Use Limited) is intended for a moderate intensity mixture of residential, retail, restaurant, and office uses.

Land Use Policy: 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.

T3 Suburban Community Center (T3 CC) is intended to enhance and create suburban community centers that serve suburban communities generally within a 10 to 20 minute drive. They are pedestrian friendly areas, generally located at prominent intersections that contain mixed use, commercial and institutional land uses, with transitional residential land uses in mixed use buildings or serving as a transition to adjoining Community Character Policies. T3 CC areas are served by highly connected street networks, sidewalks and existing or planned mass transit leading to surrounding neighborhoods and open space. Infrastructure and transportation networks may be enhanced to improve pedestrian, bicycle and vehicular connectivity.

Major and Collector Street Plan: T3-M-AB4-S (Suburban-Mixed Use-Arterial Boulevard 4 Lane-Scenic) The Major and Collector Street Plan (MCSP) calls for a 6 foot bike lane, 6 foot planting strip and 8 foot sidewalk along Old Hickory Boulevard adjacent to the proposed development. Additionally, Old Hickory Boulevard is identified as a scenic route requiring a landscape buffer along Old Hickory Boulevard.

Project Details: The project consists of a mixture 1, 2, and 3 bedroom multi-family residential units. A total of 433 parking spaces of 466 required spaces are being provided onsite. The developer is proposing to utilize Section 17.20.110 of the Zoning Code (Parking reduction for preservation of protected trees) and is working with the Urban Forester. Section 17.20.110 would allow for a maximum reduction of 46 spaces. The property is heavily wooded and the site plan shows a large area set aside for tree preservation.

The developer proposes the following sidewalk improvements:

- Extend the existing sidewalk to cover the entire length of the property along Old Hickory Boulevard
- Provide a sidewalk connection from the units to the sidewalk on Old Hickory Boulevard
- Extend the existing sidewalk south to the intersection of Old Hickory Boulevard and Central Pike (approximately 450 feet)

Additionally, with the building permit review, the developer will be required to bring the existing sidewalk up to ADA compliance and provide a minimum of 5 foot clear path of travel. The developer is also proposing to provide a bus shelter for the existing stop near Central Pike.

Planning Department Analysis: Multi-family residential is an allowed use under the existing MUL zoning. The T3 Suburban Community Center policy also supports the development of multi-family residential units within the context of the larger Community Center. There are retail, commercial, and office uses within close proximity to the planned multi-family uses providing for a balance of land uses within the Community Center and providing opportunities for current and future residents for nearby employment. The uses within the Center also provide nearby shopping and services to meet the daily needs of residents. There is an existing MTA route along Old Hickory Boulevard which provides residents with transportation choice. The site features unique topographical challenges along Old Hickory Boulevard in regards to meeting the Major and Collector Street Plan (MCSP) requirements. More detailed drawings to better understand the site constraints were warranted for this proposal. By providing for an off-site sidewalk connection along Old Hickory Boulevard to an existing bus stop, the developer is able to improve connectivity and access for future residents.

Planning Determination:

With the proposed pedestrian improvements and protection of environmentally sensitive areas, the project is consistent with the NashvilleNext adopted general plan and the community character policy for the area (T3 Community Center).

Conditions

1. Provide a sidewalk along Hermitage Woods drive to connect to the existing sidewalk along Old Hickory Boulevard.
2. Extend existing sidewalk for entire length of property along Old Hickory Boulevard.
3. Provide a sidewalk connection to the intersection of Old Hickory Boulevard and Central Pike.
4. Provide internal sidewalks throughout and connecting to the existing sidewalk along Old Hickory Boulevard.
5. Tree protection area shall remain undisturbed.
6. If the development does not meet the requirements of Section 17.20.110 of the Zoning Code, the number of units shall be reduced until parking requirements are met.

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

See attached map.

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: ECG Hermitage, LP

Project Name: Hermitage Flats

Location of the Project: 5646 Old Hickory Blvd, Hermitage TN 37076

Parcel No.: 08600035500

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

Name of
Certifying Jurisdiction: MHDA

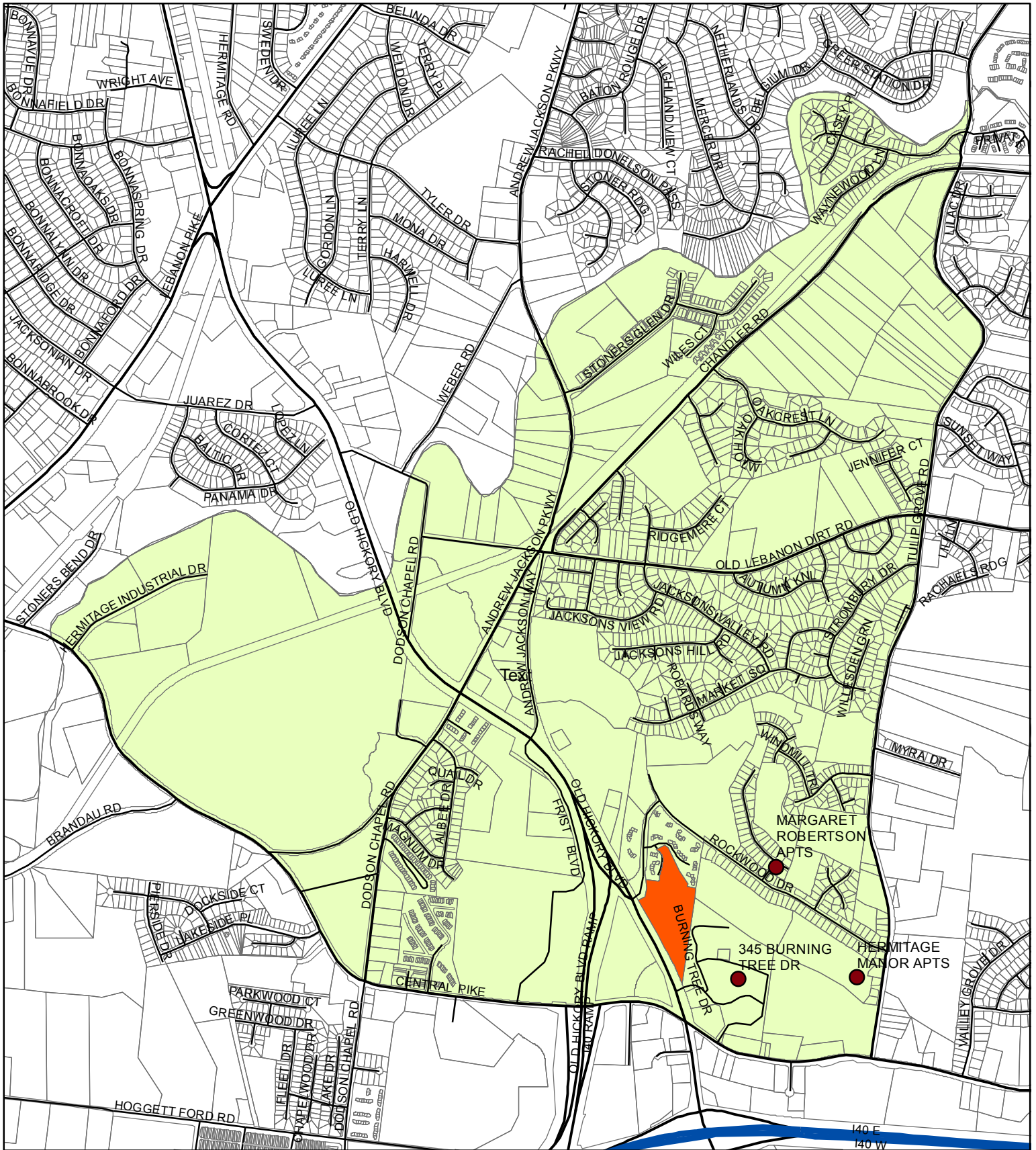
Certifying Official
of the Jurisdiction
Name: Angela C. Hubbard

Title: Director of Community Development

Signature: 

Date: 10-27-2016

Federally Subsidized Multi-Family Projects within Census Tract 047037015623



Low Income Tax Credit Project	# of Units
345 BURNING TREE DR	277
HERMITAGE MANOR APTS	84
MARGARET ROBERTSON APTS	100

- Parcel 08600035500
- Low Income Tax Credit Project
- Census Tract

