

ORDINANCE NO. 20051027-004

AN ORDINANCE AUTHORIZING EXECUTION OF THE FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING FOR EAST AUSTIN ECONOMIC DEVELOPMENT BETWEEN THE CITY AND ROBERTSON HILL LAND, LTD.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The City Manager is authorized to execute the First Amendment to the Memorandum of Understanding for East Austin Economic Development between the City of Austin and Robertson Hill Land, Ltd., in substantially the form attached as Exhibit A.

PART 2. This ordinance takes effect on November 7, 2005.

PASSED AND APPROVED

October 27, 2005

§
§
§ _____
Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk

EXHIBIT A

AMENDMENT NUMBER ONE

TO

MEMORANDUM OF UNDERSTANDING FOR EAST AUSTIN ECONOMIC DEVELOPMENT

BETWEEN

CITY OF AUSTIN

AND

ROBERTSON HILL LAND, LTD.

Dated: 7 November 2005

This Amendment Number One (the "Amendment One") to the Memorandum of Understanding for East Austin Economic Development is made and entered into by and between the **CITY OF AUSTIN** (the "City"), with offices located at 301 West Second Street - Suite 2030, Austin, Travis County, Texas 78701, and **ROBERTSON HILL LAND, LTD.**, a Texas limited partnership having as its general partner **RHL GP, LLC**, a Texas limited liability company (the "Robertson Hill"), situated at 1400 Post Oak Boulevard – Suite 500, Houston, Harris County, Texas 77056-3008 for the purposes and considerations stated below:

WHEREAS, the City and Robertson Hill desire to contract and amend the Memorandum of Understanding for East Austin Economic Development entered into by and between City and Riata Partners, L.L.C., a Texas limited liability company (the "Riata"), executed on or about 7 June 2001 and as modified on 4 February 2005 by the City's consent to the grant of certain rights under the Original Agreement to be assigned by Riata to Robertson Hill (the "Original Agreement"); and

WHEREAS, Riata has assigned all its interest in the Original Agreement to Robertson Hill; and

WHEREAS, City and Robertson Hill desire to revise the Original Agreement by making certain revisions to the definitions, the effective date and other terms of the Original Agreement;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by all of the parties to this Amendment One, City and Robertson Hill severally and collectively agree and by the execution hereof shall be bound to the mutual obligations and to the performance and accomplishment of the hereinafter described modifications, alterations and changes to the Original Agreement in the following respects only:

Section 1. City and Robertson Hill agree to amend Section 2., Definitions of the Original Agreement by adding a new definition to the list of definitions in Section 2., Definitions, entitled "reasonably-priced" as defined below:

"Reasonably-priced" means onsite or newly constructed offsite housing available to a family whose earnings do not exceed eighty percent (80%) (for offsite housing which is not newly constructed, sixty-five percent [65%]) of the median family income for the Austin-San Marcos Metropolitan Statistical Area and who would normally spend no more than thirty percent (30%) (for offsite housing which is not newly constructed, twenty-eight percent [28%]) of its income on housing expenses."

Section 2. City and Robertson Hill agree to amend Article Two, Section 2.1.F. of the Original Agreement by eliminating and striking out Article Two, Section 2.1.F. in its entirety and substituting in its place the following new Article Two, Section 2.1.F.:

"F. to include for a minimum period of fifteen years Reasonably-priced new residential housing units ("Units") in an amount not less than ten percent (10%) of the total number of residential housing units built on each distinct Project developed on a portion of the Property, with, at the sole option of Riata or its assigns with respect to each distinct Project developed on a portion of the Property, either (a) half of the Units built within the Project and half of the Units either built or acquired and renovated offsite on property located within the 78702 or 78722 zip code areas of the City of Austin, or (b) all the Units built on that portion of the Property; provided, however, for a distinct Project located on Tract Seven or Lot 17, Outlot 1, Division B of the Fred Carleton Subdivision of Tract One of the Property the City

Council must first approve an amendment to the Restrictive Covenant recorded in the Official Public Records of Travis County in Document No. 2001097088, in a form acceptable to the City Council and substantially similar to the Amendment of Restrictive Covenant for Zoning Case No. C14-00-2062; and"

Section 3. City and Robertson Hill agree to amend Article Two, Section 2.5. of the Original Agreement by eliminating and striking out Article Two, Section 2.5. in its entirety and substituting in its place the following new Article Two, Section 2.5.:

"2.5 **Chapter 380 Term.** This Memorandum shall become enforceable upon execution by City and Riata and shall be deemed effective upon the earlier to occur of: (a) the date that the first building permit is approved for the first phase of the development on the Property, or (b) the date that the first building permit is approved for a Project on the Property, or (c) 1 January 2006 ("Effective Date"). Each residential or non-residential building permit for construction on the Property issued to Riata or a third party shall trigger all the rights and obligations under this Memorandum for said party or parties. Riata and City shall confirm the date in writing of each residential or non-residential building permit and its associated land area once it has occurred. This Memorandum will terminate when City has made all Chapter 380 Payments to Riata or its assigns as required by this Memorandum.

Section 4. City and Robertson Hill agree to amend the Original Agreement by adding a new Article Two, Section 2.8. in its entirety as follows:

"2.8 **Payments Subject to Future Appropriation.** The Memorandum shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Riata. All payments made by the City under the Memorandum are subject to the City's appropriation of funds for such payments to be paid in the budget year for which they are made. The payments to be made to Riata, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic

development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event the City does not appropriate funds in any fiscal year for payments due under the Memorandum, the City shall not be liable to Riata for such payments, and Riata, in its sole discretion, shall have the right but not the obligation to rescind the Memorandum. To the extent there is a conflict between this paragraph and any other language or covenant in the Memorandum, this paragraph shall control.

- Section 5.** The headings used in this Amendment One have been included for convenience only and are not intended, and shall not be construed, to limit or define in any way the substance of any provision contained herein.
- Section 6.** This Amendment One may be executed in multiple counterparts, each of which shall be considered an original, but all of which together shall constitute one agreement.
- Section 7.** This written Amendment One (together with the Original Agreement, any modification thereto, and other documents and instruments referenced herein or contemplated hereby) is intended by the parties as a final, complete and exclusive expression of their agreement. All prior agreements and negotiations regarding the terms and conditions of the Original Agreement or any modifications thereto that are in conflict with this Amendment One are superseded by this Amendment One, and there are no other agreements or understandings between the parties. No course of prior dealing between the parties, no usage of trade and no parol or extrinsic evidence of any nature shall be used to supplement or modify any terms of the Original Agreement, any modifications to the Original Agreement, or this Amendment One.

THIS WRITTEN AMENDMENT TO THE ORIGINAL AGREEMENT, THE ORIGINAL AGREEMENT AND ANY OTHER AGREEMENTS OR WRITTEN DOCUMENTS REFERRED TO BY SUCH AGREEMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED AND DELIVERED effective as of the date first above written.

City: **CITY OF AUSTIN**

BY: _____

NAME: Michael McDonald

TITLE: Acting Assistant City Manager

ROBERTSON HILL: **Robertson Hill Land, Ltd**
 By RHL GP, LLC, its general partner

BY: _____

NAME: Martin J. Fein

TITLE: Sole Member

PREPARED IN THE LAW OFFICE OF:

City of Austin
Law Department

APPROVED AS TO FORM:

James M. Williams, Sr.
Assistant City Attorney
Texas State Bar Number 21549500