

GROUND LEASE OPTION AGREEMENT

THIS GROUND LEASE OPTION AGREEMENT (this “**Agreement**”) is entered into as of _____, 202_ (the “**Effective Date**”) by and between AUSTIN HOUSING FINANCE CORPORATION (“**Grantor**”) and _____ (“**Grantee**”).

WITNESSETH:

WHEREAS, Grantor is the fee owner of twenty-six (26) parcels of real property totaling approximately 2.495 acres, located at approximately 5900 S. Pleasant Valley Road Austin, Texas and more particularly described on Exhibit A attached hereto and made a part hereof (collectively, the “**Land**”);

WHEREAS, Grantee intends to construct a 90 to 100 unit multifamily rental housing development (the “**Development**”) on the Land; and

WHEREAS, Grantee desires to obtain, and Grantor desires to grant to Grantee an exclusive option to lease the Land, subject to and upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the sum of the Option Price (as defined below) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. *Grant of Option.* Grantor hereby grants to Grantee an exclusive option (the “**Option**”) for Grantee to lease the Land from Grantor on the terms set forth herein. This Option may be exercised only in accordance with the terms and conditions set forth herein. Grantor agrees to not enter into any agreements, conveyances, leases, purchase agreements, options, or other contractual or real estate interests in the Land whatsoever during the Option Term (as herein defined).

2. *Option Consideration.* Grantor and Grantee acknowledge and agree that the payment of One Hundred Dollars (\$100.00) (the “**Option Price**”) by Grantee to Grantor, together with the mutual promises and covenants made herein, provide valuable consideration for the Option granted herein. The Option Price shall not be refundable.

3. *Term of Agreement and Option; Termination Provisions.* The term of the Option (and this Agreement) (the “**Option Term**”) commences on the Effective Date and terminates at 11:59 p.m. CST on _____, 202_; provided that Grantor may terminate the Option (and this Agreement) prior to such date in the following circumstances: (i) upon any final determination by the Texas Bond Review Board that the Development will not be allocated 202_ private activity bond volume cap or (ii) upon any final determination by Texas Department of Housing and Community Affairs (“**TDHCA**”) that [202_] low income housing tax credits will not be allocated to the Development.

4. *Manner of Exercising Option.* Grantee may exercise this Option by delivering to Grantor, at any time during the Option Term, a written notice (the “**Option Notice**”) advising Grantor of Grantee’s election to exercise the Option. The Option Notice shall state that the Option is thereby exercised by Grantee. The leasing of the Land by Grantee shall occur on a date

designated by Grantee in the Option Notice that is no more than ninety (90) days from the date of the exercise of the Option (the “**Initial Lease Date**”); provided, however, if approval of a subdivision, plat or replat is required in order to lease the Land without violating applicable subdivision and platting regulations and is not obtained by Grantee prior to the originally scheduled Initial Lease Date, then the Initial Lease Date may be extended upon Grantee’s written request for additional period(s) of thirty (30) days each to allow Grantee additional time to obtain approval of such subdivision plat or replat. The parties hereby agree to cooperate with each other in complying with subdivision, platting or replatting requirements applicable to the leasing of the Land, if any.

5. *Ground Lease Provisions.* The term of the Ground Lease is 55 years from the Initial Lease Date. The initial rent payable by Grantee as tenant under the Ground Lease shall be \$100,000. The rent payable by Grantee as tenant under the Ground Lease is \$10,000 per year, with a 3% annual inflation adjustment, subject to adjustment by Grantor after the 15-year compliance period as set forth in the Memorandum of Understanding. The Ground Lease shall be in the standard form of ground lease generally used by Grantor with such modifications as required by Grantor in its sole discretion.

6. *Ground Lease-Related Costs.* All costs related to this Ground Lease Option and the leasing of the Land under the Ground Lease shall be paid by Grantee.

7. *Assignment of Option.* Neither party may assign its rights under this Agreement except with the prior written consent of the other party, which consent may be given or withheld in such party’s sole and absolute discretion; provided that Grantor may assign this Agreement to an affiliate of Grantor without the consent of Grantee. Any assignment or attempted assignment in violation of this Section 7 shall be null and void and shall constitute a default by the assigning party.

8. *Notices.* Any notice pursuant hereto shall be given in writing by (a) personal delivery, (b) expedited delivery service with proof of delivery, (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, (d) facsimile transmission (provided that such facsimile transmission is confirmed by expedited delivery service or by mail in the manner previously described), or (e) email transmission (provided that such email transmission is confirmed by expedited delivery service or by mail in the manner previously described) sent to the intended addressee at the address set forth below, or to such other address in the continental United States or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of email or facsimile transmission, upon receipt. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant hereto shall be as follows:

If to Grantor:

Austin Housing Finance Corporation
1000 East 11th Street Ste. 200
Austin, Texas 78702
Attn:
Phone:

Email:

With a copy to:

With a copy to:

Austin Housing Finance Corporation
General Counsel
P.O. Box 1088
Austin, Texas 78767-8839
Attn: Shannon Kackley
Phone: (512) 974-2317
Email: shay.kackley@austintexas.gov

If to Grantee:

With a copy to:

9. *Governing Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of Texas (without regard to principles of conflicts of laws).

10. *Severability.* Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in full force and effect and be binding upon the parties hereto as though such provisions had not been included.

11. *Time of the Essence.* Time is of the essence with respect to all obligations to be performed hereunder.

12. *Entire Agreement.* No oral statements or prior written material not specifically incorporated herein shall be of any force or effect. Each party agrees that in entering into and taking this Agreement, it relies solely upon the representations and agreements contained in this Agreement and no others. This Agreement, including the Exhibits, attached hereto and made a

part hereof, constitutes the whole agreement of the parties and shall in no way be constituted, modified or supplemented, except by a written agreement executed by both Grantor and Grantee.

13. *Further Assurances.* The parties hereto covenant and agree that they will execute, deliver, and acknowledge from time to time at the request of the other, and without further consideration, all such further instruments of assignment and/or assumption as may be required in order to give effect to the transactions described herein.

14. *Successors and Assigns.* This Agreement is executed by, and shall be binding upon and inure to the benefit of, the parties hereto and each of their respective successors and assigns. None of the provisions of this Agreement shall be for the benefit of or enforceable by any other person.

15. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and together shall be deemed one in the same document.

16. *Specific Performance.* If Grantor fails to consummate the transaction contemplated under this Agreement for any reason, except Grantee's default, Grantee shall be entitled to enforce specific performance of this Agreement, without the necessity of tendering performance under this Agreement or proving that Grantee was ready, willing and able to consummate the transaction contemplated by this Agreement on the scheduled Initial Lease Date.

17. *Inspections.* Notwithstanding anything contained in this Agreement to the contrary, Grantee shall have the right at any time during the Option Term to make a physical inspection and assessment of the Land, including, without limitation taking of soil samples, ground water samples and other intrusive testing, upon not less than twenty-four (24) hours' prior written notice to Grantor, which may be given by email. Notwithstanding anything to the contrary contained in the foregoing, Grantee shall not make drillings or borings on the Land without first obtaining the prior written consent of Grantor, which consent shall not be unreasonably withheld. All such testing shall be at Grantee's sole expense and shall not interfere with the reasonable operations of the Land. Further, Grantee shall be solely responsible for returning the Land to the same pre-testing condition in a reasonable timeline after any performed tests. Grantee agrees to: (a) repair any damage to the Land caused by such inspections, tests, studies, examinations and investigations; (b) pay for and keep in full force and effect comprehensive or general liability insurance with coverage limits of not less than One Million Dollars (\$1,000,000) for bodily injury, personal injury, death and property damage; and (c) indemnify, defend and hold Grantor harmless for, from and against any and all claims and expenses arising or resulting from such inspections, tests, studies, examinations and investigations, excluding, however, any of the foregoing caused by the willful misconduct of Grantor, its invitees or Grantor's employees, agents, representatives or any third party engaged by Grantor. Grantee's obligations under this Section 18 shall survive the termination of this Agreement.

[Remainder of Page Intentionally Left Blank]

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

GRANTOR:

AUSTIN HOUSING FINANCE CORPORATION

By: _____
Name:
Title:

STATE OF TEXAS

§

COUNTY OF TRAVIS

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This instrument was acknowledged before me on the _____ day of _____, 202__
by _____, _____ of Austin Housing Finance Corporation.

(SEAL)

Notary Public in and for the State of Texas

(Printed Name of Notary)

My commission expires: _____

GRANTEE:

By: _____,
its _____

By: _____
Name:
Title:

STATE OF TEXAS

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§
§

COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, 202_ by
_____, _____ of _____, General Partner of
_____, a _____.

(SEAL)

Notary Public in and for the State of Texas

(Printed Name of Notary)

My commission expires: _____

Exhibit A

Legal Description of Land