

# MEMORANDUM OF UNDERSTANDING

## Drowsy Willow Attached and Detached Housing Development

This Memorandum of Understanding (this **Agreement**) dated and effective as of March \_\_, 2024, is by and between Austin Housing Finance Corporation, a Texas public, nonprofit corporation organized and operated under Chapter 394 of the Texas Local Government Code (**AHFC**), and [SELECTED DEVELOPER], a [type of entity] (**Developer**). For purposes of this Agreement, AHFC and Developer are each a “Party” and are collectively the “Parties.”

WHEREAS, AHFC owns 2.734 acres of vacant land in fee-simple located at 5901 Drowsy Willow Trail in Austin, Texas (**Exhibit A**) that it wants to develop with attached and detached housing to be sold by AHFC as income- and resale-restricted owner-occupied housing to income eligible homebuyers, and held long-term within AHFC’s Community Land Trust; and,

WHEREAS, AHFC released a Request for Qualifications solicitation on August \_\_, 2023 to identify a qualified developer and development team to contract with AHFC to develop affordable housing on 5901 Drowsy Willow Trail; and,

WHEREAS, the AHFC Board of Directors approved an award of the Drowsy Willow Development Opportunity to the Developer on November \_\_, 2023; and,

NOW THEREFORE, for good and valuable consideration, the Parties hereby agree as follows:

1. **Project Description.**

- (a) Developer agrees to design, permit, finance, and construct, in coordination with AHFC, 30 to 50 attached and detached housing units to be sold by AHFC as income- and resale- restricted housing to income-eligible homebuyers upon the completion of construction.
- (b) Developer and AHFC agree to design and construct at least 50 percent of the homes as multi-bedroom units, including 2, 3, and 4-bedroom units.
- (c) Developer and AHFC agree to work with the Project’s Architect and Engineer to design and develop as many units as possible, not to exceed 50 total units.

2. **Developer Entity.**

- (a) Following the execution of this MOU, Developer and AHFC may agree to form a Limited Partnership (LP) in which AHFC will serve as General Partner and the Developer will serve as a Special or Administrative Limited Partner.

(b) The LP may be the Borrower for all financing secured and used to construct the Project.

### 3. **Development and Financing Schedule.**

The Parties agree to take all actions necessary and in accordance with this Agreement, including entering into other agreements to comply with the following Development and Financing Schedule:

- **November 2023 – Staff recommends awarding the Development Opportunity to the AHFC Board**
- **February 2024 – This Agreement is executed, and the Developer Entity is formed**
- **March 2024 – Developer Entity contracts with the Project Architect and Engineer and begins designing the Project**
- **March 2025 – Site Plan Approved**
- **July 2025 – Developer Begins Site Work and Construction of Infrastructure**
- **November 2025 – Developer Begins the First Phase of Vertical Construction (up to 30 units)**
- **November 2026 – Developer Begins the Second Phase of Vertical Construction (up to 30 units)**

### 4. **Financing of the Project.**

The Developer shall be solely responsible for securing the financing necessary to develop the Project. That financing shall consist of one or more construction loans and is anticipated to require additional funding to be provided by AHFC to fully source the funding necessary to complete the Project. AHFC is prepared to recommend approval of funding up to \$9 million to its Board of Directors to complete the capital sources necessary to fund the Project. The AHFC funding requests shall be based on the Development Budget prepared by the Developer and

approved by AHFC. The Developer shall prepare, cause to be prepared, and submit all necessary applications to finance the Project.

5. **Requirement to Start Work.** Developer must start work prior to the month and year described in Section 3 for each respective phase.

6. **Completion of Construction.** Developer must ensure the completion of each phase of vertical construction and Certificate of Occupancy are issued for each of the units within 20 months of beginning construction on each phase.

7. **Developer to Obtain Necessary Financing and Approvals.** Developer will obtain all financing, governmental and other approvals, consents, and permits required under all applicable laws necessary to develop the Project.

8. **Proprietary Information.** Upon fulfillment by both Parties of all obligations set forth in this Agreement or upon termination of this agreement the Developer shall make available all contracts and plans associated with the Project to AHFC.

9. **Required AHFC Approvals.** AHFC reserves the right to review and must approve the following materials prior to release, filing, or execution by the Developer or Developer Entity:

- (a) Financing Applications
- (b) Contract for Architectural Services
- (c) Contract for Engineering Services
- (d) Construction Contract
- (e) Development Budget (100% Schematic, Design, Construction)
- (f) Final Design and Construction Phasing
- (g) Site Plan
- (h) Construction Loan Draws
- (i) General Contractor RFP
- (j) General Contractor RFP Distribution List
- (k) Project's General Contractor

10. **Communications with Vendors.** Developer must include the AHFC Project Manager in all email correspondences and meetings between Developer and the Project's Architect, Engineer, and General Contractor prior to the execution of any agreements related to this Project, between Developer and the Project's Architect, Engineer, and General Contractor. Developer must include the AHFC Project Manager in any regularly occurring meetings between

Developer and the Project's Architect, Engineer, and General Contractor. Developer may not undertake any negotiations with any vendors working on the Project contrary to the terms stated in this Agreement.

11. **Competitive Bidding Required for Project's General Contractor.** Developer must prepare and release a Request For Proposals (RFP) to at least 3 vendors to identify a general contractor to manage the construction of the Project. Developer may not release the RFP Distribution List in final form until it is approved by AHFC. Developer must follow this competitive bidding requirement even if Developer is a general contractor or is affiliated with a general contractor.

12. **Builder Warranties.** Upon completion of construction of each phase, and as a condition of receiving the Developer Fee and future funding approvals by AHFC, Developer shall make available to AHFC and future owners, a builder's warranty on the construction that includes at least a 1-year warranty on all workmanship and materials, a 2-year warranty on all systems, and a 10-year warranty to cover any major structural defects.

13. **Developer Fee.** The Developer's sole compensation for its work is through the payment of a Developer Fee by AHFC. The Developer Fee is \$1,500,000 and shall be paid to the Developer by AHFC upon the issuance of Final Certificate of Occupancy for the last unit in each phase if the Developer has been found to have materially complied with all requirements of this Agreement. The developer fee shall be paid on a pro rata basis for each unit completed within each phase.

14. **Default.** The Parties are considered in default if they breach any of the obligations or requirements in this Agreement.

15. **Dispute Resolution.**

(a) The Parties agree to use their respective reasonable commercial efforts in good faith to resolve any disputes arising out of or related to this Agreement. To the extent that the dispute in question cannot be resolved through negotiation, it shall first be submitted to confidential mediation before a professional mediator in Travis County, Texas, mutually agreeable to the Parties, for a period to last no more than sixty (60) days or such time frame as otherwise agreed to by the Parties, and if such dispute is not settled within such time, it shall then be settled by further mediation or BINDING ARBITRATION before a single arbitrator in Travis County, Texas, in accordance with the Commercial Rules of the American Arbitration Association ("AAA").

(b) If arbitration is required to resolve a dispute, either Party may select one person to act as the arbitrator for resolution of the dispute (the first Party to give written notice of its proposed arbitrator to the other Party hereto shall be the "**Initiating Party**"). The person selected by the Initiating Party shall not be an Affiliate of any party to the dispute in question and shall have at least ten (10) years of experience in matters related to real estate development. The Initiating Party shall give written notice to the other Parties hereto specifying the person selected by the Initiating Party to act as the arbitrator for

resolution of that dispute. The other Parties shall have ten (10) Business Days to object to the qualifications or independence of the person so selected by the Initiating Party to act as the arbitrator for resolution of that dispute and to specify an alternative arbitrator. The two chosen arbitrators shall then select the arbitrator to be utilized for resolution of the dispute. If, within ten (10) Business Days after the Initiating Party gives written notice specifying the person selected by the Initiating Party to act as arbitrator, the Initiating Party has not received a writing from the other Parties objecting to the qualifications or independence of the person so selected by the Initiating Party, the person selected by the Initiating Party shall act as the arbitrator for resolution of the dispute in question.

(c) The decision of the arbitrator shall be in writing with written findings of fact and shall be final and binding on the Parties. The costs of arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the Parties. Each Party shall bear the cost of preparing and presenting its case. The arbitrator shall be empowered to award money damages, but shall not be empowered to award consequential damages, indirect damages, special damages, punitive or exemplary damages, or specific performance. The award may be confirmed and enforced in any court of competent jurisdiction. This Section 15 provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement, except that a Party may seek a preliminary injunction or other injunctive relief in any court of competent jurisdiction if in its reasonable judgment such action is necessary to avoid irreparable harm.

16. **Termination.** This Agreement may be terminated by either or both Parties providing written notice following any Default. The Parties may terminate this Agreement in the following circumstances:

(a) at any time if the Parties mutually agree to terminate; or

(b) if Developer is in default and fails to cure the breach within 30 days of notification of the default by AHFC, or such longer period as permitted by AHFC in its sole discretion; or

(c) if AHFC is in default and fails to cure the breach within 30 days of notification of default by the Developer, or such longer period as permitted by the Developer in their sole discretion.

17. **Obligations Following Termination.** Upon termination of this Agreement the parties shall have no obligations to each other other than those set forth in this Agreement.

18. **Miscellaneous.**

(a) This Agreement only may be amended with the written consent of AHFC and Developer.

(b) Each Party hereto is prohibited from assigning any of its interests, benefits, or responsibilities hereunder to any affiliate or any third party, without the prior written consent of the other Party.

(c) The Parties agree to execute such documents and do such things as may be necessary or appropriate to facilitate the consummation of this Agreement.

(d) This Agreement may be executed in several counterparts, each of which is considered to be an original copy and all of which together constitutes one agreement binding on the Parties, notwithstanding that the Parties have not signed the same counterpart.

(e) THIS AGREEMENT IS GOVERNED AND MUST CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF CONFLICT OF LAWS PRINCIPLES.

(f) In case any one or more of the provisions contained in this Agreement for any reason are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(g) The Parties submit exclusively to the jurisdiction of the state courts of Austin, Travis County, Texas, and venue for any cause of action arising hereunder lies exclusively in the state courts of Austin, Travis County, Texas.

(h) The subject headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation hereof.

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This Memorandum of Understanding is executed and effective as of the date above shown.

**AHFC:**

**AUSTIN HOUSING FINANCE CORPORATION**  
a Texas public, nonprofit corporation organized and  
operated under Chapter 394 of the Texas Local  
Government Code

By: \_\_\_\_\_  
Rosie Truelove  
Treasurer

{signature follows}

**DEVELOPER:**

**[SELECTED DEVELOPER]**

By: \_\_\_\_\_



## **EXHIBIT A - LAND DESCRIPTION**

Lot 1 through 26, Block 4, The Villages at Pleasant Valley, Section 2, a subdivision recorded in Volume 78, Page 91 of the Plat Records of Travis County, Texas