

ARLINGTON HOUSING FINANCE CORPORATION

AGENDA

TELEPHONE MEETING – ACCESSIBLE BY CALLING (833) 268-8354 AND ENTERING THE
CONFERENCE ID NUMBER: 418 050 905#

October 2, 2020
1:00 PM

I. CALL TO ORDER

II. APPROVAL OF MINUTES

III. RESOLUTIONS – RESERVE AT MAYFIELD

- a. A resolution concerning the issuance of bonds to finance a project for the benefit of Reserve at Mayfield, LLC and related matters
- b. A resolution approving a certain memorandum of understanding; authorizing and directing the execution of the same; authorizing and directing the execution of documents and instruments necessary or convenient to accomplish said transactions; and containing other provisions relating to the subject

IV. RESOLUTIONS – CELEBRATION ARLINGTON

- a. A resolution concerning the issuance of bonds to finance a project for the benefit of Celebration Arlington Senior Housing, Limited Partnership and related matters
- b. A resolution approving a certain memorandum of understanding; authorizing and directing the execution of the same; authorizing and directing the execution of documents and instruments necessary or convenient to accomplish said transactions; and containing other provisions relating to the subject

V. MISCELLANEOUS ITEMS

VI. ADJOURN

MINUTES

REGULAR MEETING
ARLINGTON HOUSING FINANCE CORPORATION
TELEPHONE MEETING - ACCESSIBLE BY CALLING (833) 268-8354,
ACCESS CODE: 594 360 666#
September 18, 2020

The Arlington Housing Finance Corporation board meeting convened by telephone conference at 1:00 p.m., 101 West Abram, Arlington, Texas, notice of said meeting being posted as prescribed by Chapter 551, V.T.C.A., Government Code, with the following members present, to wit:

| | | |
|-----------------------|---|-----------------------|
| Ignacio Nunez | ~ | President |
| Andrew Piel | ~ | Vice President |
| Marvin Sutton | ~ | Treasurer |
| Victoria Farrar-Myers | ~ | Secretary |
| Scott Hobohm | ~ | Board Member |
| Jennifer Wichmann | ~ | City Manager's Office |
| Mindy Cochran | ~ | Housing |

I. Call to Order

Chair Ignacio Nunez called the meeting to order and stated the purpose of the meeting was to conduct the following items of business.

II. Approval of Minutes

Mindy Cochran provided the minutes from the meeting held August 25, 2020. Marvin Sutton made a motion to approve the minutes. Dr. Farrar-Myers seconded the motion. The motion passed and the minutes were approved.

III. Easements

Ms. Cochran provided additional information about the emergency and utility easement request through the Paddock at Park Row. The easement will not impact parking. Dr. Farrar-Myers made a motion to approve the request, and Marvin Sutton seconded the motion. The motion passed.

IV. Consideration of a down payment assistance program

Ms. Cochran provided the board with options related to a down payment assistance (DPA) program that would be a component of the existing Mortgage Credit Certificate Program. The options included a fixed dollar amount versus a variable amount based on loan size, a repayable versus forgivable option, and various combinations of these. After considerable discussion, Marvin Sutton made a motion to create a DPA program for the first 20 loans closed using option #2 which is a fixed amount of \$7,500 and would be repayable based on the schedule which provided for \$7,500 to be repaid if repayment took place within 36 months of closing, \$8,000 to be repaid if repayment took place within 72 months of closing, and \$8,500 to be repaid at 30

years or the sale of the home, whichever came earlier. Dr. Farrar Myers seconded the motion and the motion passed.

V. FY2021 Budget

Ms. Cochran reviewed the budget for the board and clarified that the line item for Neighborhood Initiatives included both neighborhood matching grants and code enforcement activities. Dr. Farrar-Myers made a motion to approve the FY21 budget. Scott Hobohm seconded the motion and the motion passed.

VI. Adjourn

There being no further business, the meeting was adjourned at 1:43 p.m.

NOTE: Taped recordings and minutes of all City Council subcommittee meetings are a matter of public record and are kept on file in the City Manager's Office, 101 W. Abram Street, Arlington, Texas. Any committee member or interested party has the right to review these tapes and minutes at the City Manager's Office.

ARLINGTON HOUSING FINANCE CORPORATION

OCTOBER 2, 2020

Celebration Arlington Senior Housing, LP

Partnership
Proposal

Celebration Arlington

- ▶ Developer: Javelin Development LLC
 - ▶ Alan Naul
 - ▶ Kevin Eden
- ▶ 8201 S. Collins Street - 21.581 acres
 - ▶ 18.881 acres affordable senior housing
 - ▶ 2.7 acres commercial with AHFC/City Council approved compatible uses
- ▶ 340 total affordable senior housing units - modern farmhouse style
 - ▶ 270 units in four story building - 40 efficiencies, 165 1-bedroom, 65 2-bedroom
 - ▶ 70 units in single story cottages - 15 1-bedroom, 55 2-bedroom
- ▶ Gross rent range: \$799 - \$1,011 Current zoning: CS

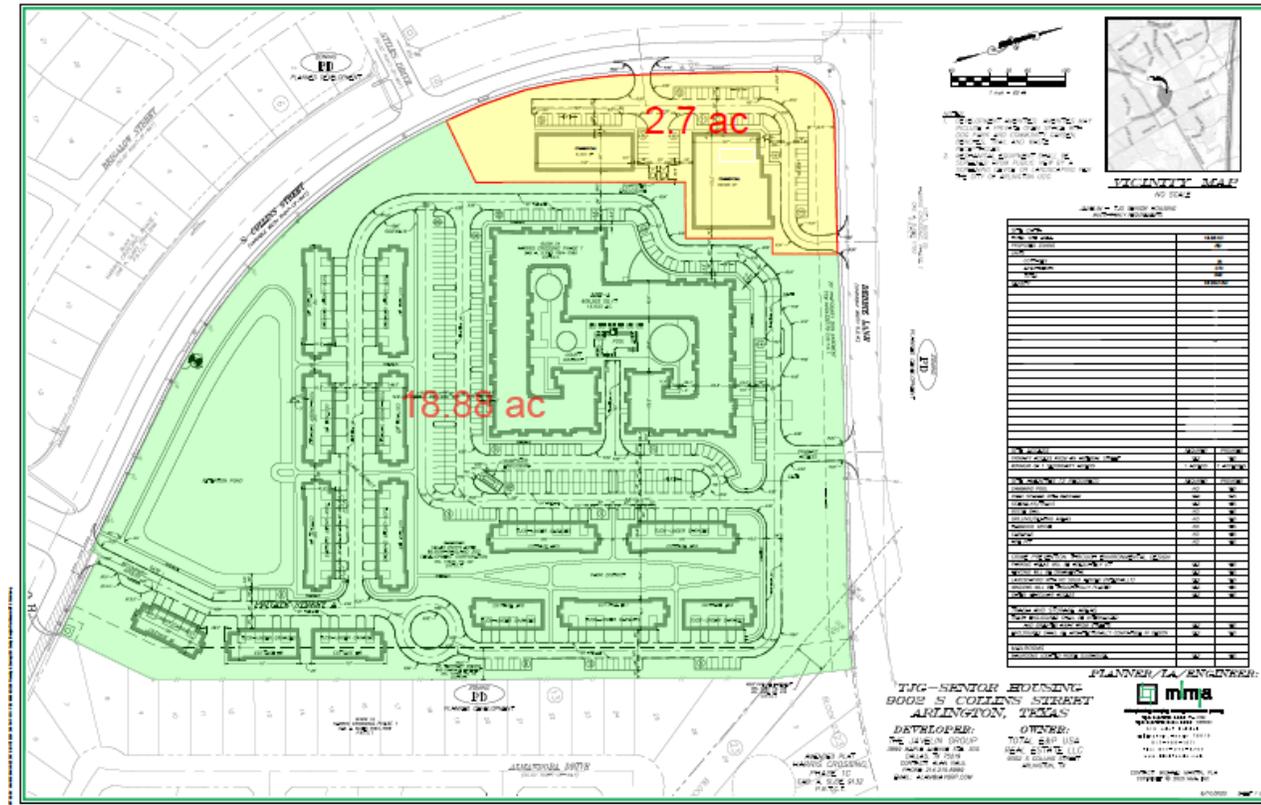


Renderings

Celebration Arlington

If approved, the developer will need to rezone the property for MF but has agreed that a portion of the land will remain for commercial uses complimentary to senior housing such as a medical facility.

This portion would not be owned by the AHFC.



Amenities

Unit amenities include:

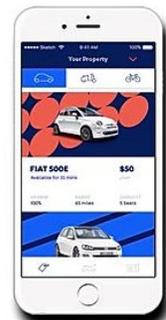
- Wood-style vinyl flooring
- Solid surface countertops
- Washer/dryers
- Dishwashers
- Lighting in cabinets, linen closets and pantries
- Walk in closets

Transportation/Parking

- Covered parking for every unit
- Shuttle to nearby grocery, etc.
- Electric car sharing service

Common Area

- Fitness center
- Library
- Movie theater
- Ping pong tables



+



+



MOBILITY AS AN AMENITY™

On Demand Electric Vehicles
Parked Where You Live, Work and Stay

Development Cost and Financing

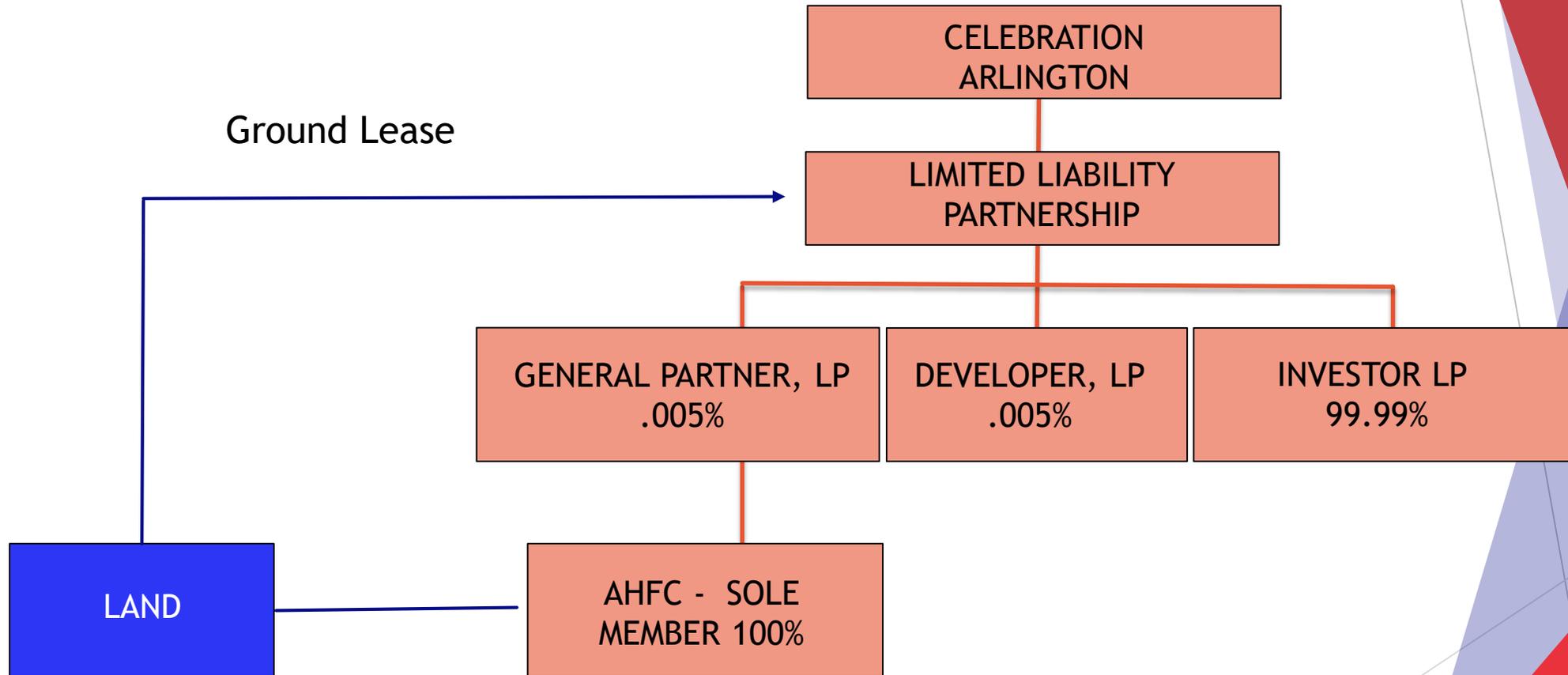
- ▶ \$57,163,000 total development cost
- ▶ \$48,000,000 bond financing
- ▶ Tax credit equity

- ▶ \$121K per unit hard costs or \$125.71 / SF
- ▶ \$168K per unit total development cost or \$173.65 / SF

Process

- ▶ Resolution of no objection on City Council agenda 9/29/2020
- ▶ Inducement resolution/MOU
- ▶ Application to Bond Review Board
- ▶ Application for housing tax credits
- ▶ Transaction close
- ▶ Construction commences 7/1/21
- ▶ Estimated completion 7/1/23
- ▶ Occupancy - cottages 7/1/22, 4-story structure 7/1/23

Ownership



Fee Structure

- ▶ Developer fee: 75% Developer / 25% AHFC split
- ▶ Cashflow: 10% to Investor LP, then 62.50% Developer, 37.50% General Partner (AHFC)
- ▶ Sale or refinancing proceeds: 10% to Investor LP, then 62.50% Developer, 37.50% General Partner (AHFC)
- ▶ Annual management fee: General Partner (AHFC)
- ▶ Co-developer fee to AHFC affiliate (AHFC)
- ▶ Annual payment in lieu of taxes (AHFC)

Developer Request

Inducement resolution for bond issuance in the amount of \$48MM

Resolution approving a Memorandum of Understanding (framework for formal partnership documents) and related documents

Reserve at Mayfield, LLC

Partnership
Proposal

Reserve at Mayfield

- ▶ Developer: MVAH Development, LLC
 - ▶ Darren Smith
 - ▶ Justin Gregory
- ▶ 1950 E. Mayfield- 14.91 acres; zoned RMF-22
- ▶ 236 total senior housing units - 55+
 - ▶ 220 units in 3-four story buildings; 16 units in single story cottages
 - ▶ 211 at 60% AMI, 25 units at market rent
 - ▶ 122 2-bedroom units; 114 1-bedroom units
- ▶ Affordable rents: \$863 - \$1,038

Rendering



Amenities

Unit amenities

- Coat closets
- Central AC
- Washer/dryer hook ups
- Breakfast bar
- Kitchen pantry
- Energy efficient appliances

Site amenities

- Pool
- Walking loop with water feature
- Dog park
- Butterfly garden
- Satellite EnVision Center

Services (based on resident need)

- Financial planning
- Nutritional classes
- Social events
- Exercise classes
- Income tax preparation

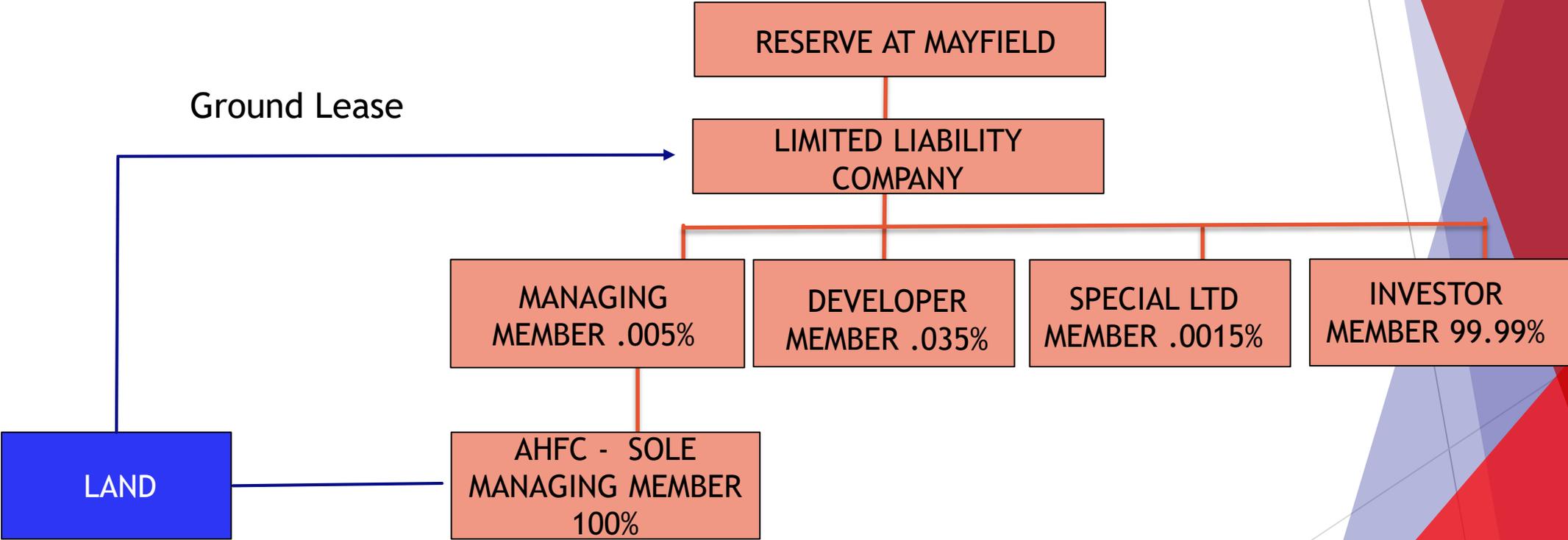
Development Cost and Financing

- ▶ \$36,744,009 total development cost
 - ▶ \$26,500,000 bond financing
 - ▶ Tax credit equity and MVAH Partners LLC
- ▶ \$156K per unit total development cost

Process

- ▶ Resolution of no objection on City Council agenda 9/8/2020
- ▶ Inducement resolution/MOU
- ▶ Application to Bond Review Board
- ▶ Application for housing tax credits
- ▶ Transaction close 7/1/2021
- ▶ Construction commences 7/1/2021
- ▶ Occupancy - June 2023

Ownership



Fee Structure

- ▶ Developer fee: 75% Developer / 25% AHFC split
- ▶ Cashflow: 10% to Investor Member, then 62.50% Developer Member, 37.50% Managing Member (AHFC)
- ▶ Sale or refinancing proceeds: 10% to Investor Member, then 62.50% Developer Member, 37.50% Managing Member (AHFC)
- ▶ Annual management fee: Managing Member (AHFC)
- ▶ Co-developer fee to AHFC affiliate (AHFC)
- ▶ Annual payment in lieu of taxes \$100,044 (AHFC)

Developer Request

- ▶ Inducement resolution for bond issuance in the amount of \$26.5MM
- ▶ Resolution approving a Memorandum of Understanding (framework for formal Company Agreement) and related documents

A RESOLUTION CONCERNING THE ISSUANCE OF BONDS
TO FINANCE A PROJECT FOR THE BENEFIT OF
RESERVE AT MAYFIELD LLC AND RELATED MATTERS

WHEREAS, the Arlington Housing Finance Corporation (the "Issuer") has been duly created and organized by the City of Arlington, Texas (the "City"), pursuant to and in accordance with the provisions of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended (the "Act"), for the purpose of providing a means of financing the costs of residential ownership and development that will provide decent, safe, and sanitary housing for persons of low and moderate income at prices they can afford; and

WHEREAS, the Act authorizes the Issuer to issue bonds for the purposes set forth in the previous paragraph;

WHEREAS, Reserve at Mayfield, LLC (the "User"), is to be formed with an entity related to the Issuer as managing member of the User to provide for the acquisition, construction, equipping, ownership, and operation of certain real and/or personal property consisting of a 236 unit multifamily residential rental project situated on approximately 14.91 acres located at 1950 E. Mayfield Road, Arlington, Texas 76014 (the "Project");

WHEREAS, the User desires that some or all of the Project be financed and/or refinanced with tax-exempt bonds;

WHEREAS, if issued, such bonds will be considered to be private activity bonds under section 141 of the Internal Revenue Code, as amended;

WHEREAS, the User desires that the Issuer submit to the Texas Bond Review Board an Application for Allocation of Private Activity Bonds for the 2021 calendar year for the Project (the "Application"), and if allocated a reservation pursuant to the Application (the "Reservation"), requests the Issuer to issue the aforementioned tax-exempt bonds for use by the User to finance and/or refinance the Project;

WHEREAS, the Issuer wishes to declare its present intent to issue tax-exempt bonds in such aggregate principal amount as is actually required to finance and/or refinance and pay for the acquisition, construction, and equipping of the Project so long as the User meets all of the Issuer's conditions for such issuance of tax-exempt bonds;

WHEREAS, the Issuer expects that prior to the issuance of such tax-exempt bonds certain capital expenditures may be paid in connection with the acquisition, construction, and equipping of the Project, and the design and planning of the Project;

WHEREAS, Section 1.150-2 of the Income Tax Regulations provides that certain expenditures on the Project may not be reimbursed from the proceeds of tax-exempt bonds

unless, along with other requirements, there is a declaration of official intent to reimburse the expenditure prior to the date that the expenditure to be reimbursed was paid; and

WHEREAS, the User desires to be reimbursed for any prior qualifying expenditures with proceeds of the tax-exempt bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON HOUSING FINANCE CORPORATION THAT:

Section 1. The Issuer hereby declares its present intent to issue tax-exempt bonds to finance the Project in an amount necessary to pay a portion of the costs thereof, the aggregate costs of the Project presently estimated to be approximately \$36,744,009 and the portion of the Project to be financed by the tax-exempt bonds presently estimated to be approximately \$26,500,000.

Section 2. This Resolution is a reimbursement resolution under Section 1.150-2 of the Income Tax Regulations by the Issuer and a declaration that it reasonably expects to reimburse the qualifying expenditures described above. The Issuer reasonably expects to incur debt, as one or more series of obligations, with an aggregate maximum principal amount equal to \$26,500,000, a portion of which will be used to reimburse the User for capital expenditures paid prior to the date of issuance of such obligations for the Project.

Section 3. Neither the Issuer nor the User has funds or sources of funds, other than proceeds of the debt to be incurred, which the Issuer or the User have, or reasonably expect to be reserved, allocated on a long-term basis, or otherwise set aside in the Issuer's or User's budget or other financial policies with respect to the expenditures to be reimbursed.

Section 4. All costs reimbursed pursuant hereto will be capital expenditures under general federal income tax principles. No debt obligations will be issued by the Issuer in furtherance of this Resolution for a reimbursement later than permitted by Section 1.150-2 of the Income Tax Regulations or other applicable Income Tax Regulations.

Section 5. The officers of the Issuer are hereby authorized to take all actions necessary to carry out the authority conferred by this Resolution and to execute and deliver all documents necessary to carry out this authority, including, but not limited to, filing the Application with the Texas Bond Review Board for the Reservation and documents relating to carry forward of any allocation reservation.

Section 6. The issuer is adopting the resolution with the understanding and requirement that the bonds, if issued, shall never constitute an indebtedness or general obligation of the issuer, the sponsor, the State of Texas, or any other political subdivision of the State of Texas, within the meaning of any constitutional provision or statutory limitation whatsoever, but the bonds, if issued, shall be limited or special obligations of the issuer payable solely from the funds provided therefor. Neither the faith and credit nor the taxing power of the sponsor, or the State

of Texas, nor any other political subdivision of the State of Texas will be pledged to the payment of the principal of the bonds or the interest or any premium thereon or other costs incident thereto. Neither the members of the governing body of the issuer, the sponsor, nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

Section 7. This Resolution reflects the Issuer's present intent and the Issuer reserves the right not to issue the bonds either with or without cause and with or without notice, and in such event, the Issuer shall not be subject to any liability or damages of any nature. Neither the User nor anyone claiming by, through, or under the User shall have any claim against the Issuer or the Unit whatsoever as a result of any decision of the Issuer not to issue the bonds.

Section 8. The officers of the Issuer are hereby authorized to execute and attest such other agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, written requests, and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 9. Notwithstanding any other provision of this Resolution, the officers executing the documents authorized herewith are each hereby authorized to make or approve such revisions in the form of the documents approved hereby (the execution thereof being conclusive evidence of their approval of such revisions) as may be necessary or convenient to carry out or assist in carrying out the purposes of this Section 9. All resolutions or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 10. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

Section 11. This Resolution shall take effect immediately upon its passage.

Passed and approved this October 2, 2020.

President

ATTEST:

Secretary

A RESOLUTION APPROVING A CERTAIN MEMORANDUM OF UNDERSTANDING; AUTHORIZING AND DIRECTING THE EXECUTION OF THE SAME; AUTHORIZING AND DIRECTING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO ACCOMPLISH SAID TRANSACTIONS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

Whereas, MVAH Partners ("MVAH") has informed the Arlington Housing Finance Corporation ("AHFC") that it intends to form a Texas limited liability company (the "Company"), in order to acquire, construct, equip, and own a 236-unit senior living multifamily residential rental project to be located at 1950 E. Mayfield Road, Arlington, Texas 76014 (the "Project");

Whereas, MVAH presently anticipates that the fee ownership of the real property on which the Project is constructed will be owned by AHFC which will enter into a ground lease (the "Ground Lease") with the Company;

Whereas, it is presently anticipated that the Company will consist of a for-profit affiliate of AHFC which will serve as the Managing Member of the Company and which Managing Member will own a .005% interest in the Company (the "Managing Member"), MVAH which will own a .005% membership interest in the Company, as a developer member, and to-be-determined investor members which will own 99.99% of the membership interest in the Company;

Whereas, it is presently contemplated that AHFC will own 100% of the Managing Member;

Whereas, AHFC and MVAH desire to set forth certain preliminary terms of the transaction in a Memorandum of Understanding (the "Memorandum of Understanding"), a substantially final draft form of which is attached hereto as Exhibit A;

Whereas, it is the present intent of AHFC as the owner of the Managing Member that the Managing Member will be initially managed by [Trey Yelverton, Jennifer Wichmann, and Melinda R. Cochran (the "Managers") with Melinda R. Cochran ("Melinda R. Cochran") acting as the designated manager] [AHFC];

Whereas, the Managing Member will cause the execution of various documents on behalf of the Company, such documents to be executed on behalf of the Managing Member by [Melinda R. Cochran or another Manager in her absence][an officer of AHFC];

Whereas, in addition to the Managing Member, AHFC presently anticipates the creation of one or more other limited liability companies in conjunction with the transactions herein contemplated of which the sole member is to be AHFC and which initially are to be managed by [the Managers][AHFC]; and

Whereas, AHFC will be executing various documents in conjunction with the purchase and lease of the site of the Project and other matters related to the transactions herein contemplated and creating other entities that will be controlled by AHFC and managed by [the Managers][AHFC].

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON HOUSING FINANCE CORPORATION that:

Section 1. The form and substance of the Memorandum of Understanding in the substantially final draft form attached hereto as Exhibit A are hereby approved and the terms thereof are hereby incorporated by reference herein, and the proper officers of AHFC are each hereby authorized to execute and attest the Memorandum of Understanding.

Section 2. Any officer of AHFC executing the Memorandum of Understanding is authorized to make or approve such revisions in the form of the Memorandum of Understanding which, in the opinion of counsel to AHFC, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 3. Any and all actions previously taken in conjunction with the formation of the Managing Member and any other entities in conjunction with the transactions herein contemplated that will be controlled by AHFC and managed by [the Managers][AHFC] are hereby ratified and confirmed.

Section 4. [The Managers] [The officers of AHFC] are authorized to execute all documents necessary and appropriate to the successful acquisition, financing, construction equipping, and operation of the Project.

Section 5. All instruments to be executed shall be in form and substance satisfactory to the people executing the documents with the advice of legal counsel to AHFC, the approval of each such instrument to be conclusively evidenced by the execution thereof.

Section 6. All officers of AHFC are jointly and severally authorized and directed for and on behalf of AHFC to execute and deliver all instruments from time to time required by and in the consummation of the transactions herein contemplated as the officer acting shall deem to be necessary or desirable with the advice of legal counsel to AHFC, without the necessity of attestation by any other officer of AHFC and with or without the seal of AHFC. The approval of each such instrument shall be conclusively evidenced by the execution thereof.

Section 7. It is officially found, determined, and declared that the meeting at which this Resolution is passed was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by V.T.C.A., Government Code, Chapter 551, as amended.

Section 8. This Resolution shall take effect and be in full force from and after its passage on the date shown below.

PASSED AND APPROVED this October 2, 2020.

ARLINGTON HOUSING FINANCE
CORPORATION

By: _____
President

ATTEST:

By: _____
Secretary

EXHIBIT A

SUBSTANTIALLY FINAL FORM OF MEMORANDUM OF UNDERSTANDING

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
ARLINGTON HOUSING FINANCE CORPORATION
AND
MVAH DEVELOPMENT LLC**

Reserve at Mayfield Apartments

This Memorandum of Understanding (this "**MOU**") is executed by and between Arlington Housing Finance Corporation ("**AHFC**"), a public nonprofit housing finance corporation organized pursuant to Chapter 394, Texas Local Government Code, as amended (the "**Act**"), and **MVAH Development LLC**, a Georgia limited liability company (the "**Developer**"), and is dated effective as of October 2, 2020.

The Developer is a developer of affordable housing in the State of Texas. AHFC is an instrumentality of the City of Arlington, Texas (the "**City**"), that, as a part of its mission, provides decent, safe, and sanitary housing at affordable prices for residents of the City. The City has a need for affordable housing. The Developer and AHFC hereby agree to work cooperatively to develop affordable housing at the following location, in accordance with the terms of this MOU:

Site: Acquisition, construction, and equipping of a 236 unit senior living multifamily residential rental project consisting of 7 buildings with 102 one bedroom/one bath units, 118 two bedroom/one bath units, 12 one bedroom villas, and 4 two bedroom villas situated on an approximately 14.91 acre tract of land in the City located at 1950 E. Mayfield Road, Arlington, Texas 76014 (the "**Development**") and to be financed, in part, with 4% Tax Credits (hereinafter defined) and tax-exempt bonds.

In order to accomplish this purpose, the parties hereto agree as follows:

AGREEMENTS:

A. **Ownership Structure.**

1. The Developer will form a Texas limited liability company (the "**Company**") for the purpose of owning and operating the Development. The sole managing member of the Company is intended to be a Texas limited liability company of which the sole member shall be AHFC which affiliate will own 100% of the managing member and which managing

member (the "**Managing Member**") shall own 0.005% of the Company. The Managing Member will have primary responsibility for the management of the Company.

2. The Developer may designate an affiliate to serve as a member of the Company (the "**Developer Member**"), which affiliate would own 0.035% of the Company. The Managing Member will delegate operational authority to the Developer Member to the greatest extent possible, subject to revocation in the event the Developer Member takes any action or fails to take any action in a manner that is inconsistent with the public purpose of AHFC. Notwithstanding whether such delegation has occurred, the Developer Member will have certain oversight and approval rights, including without limitation, approval of:

- (i) any change to the Company Agreement (hereinafter defined);
- (ii) any material change in the construction or development plans or budget for the Development;
- (iii) any amendment to the Loan documents or Equity documents (as hereinafter defined);
- (iv) any refinancing of the Company or the Development;
- (v) any change in the property manager;
- (vi) the annual budgets for operating and capital expenses;
- (vii) rent increases and concessions;
- (viii) withdrawals from reserves; and
- (ix) any issues arising with the Texas Department of Housing and Community Affairs ("**TDHCA**").

3. Auxano Development LLC, a Texas limited liability company, shall be admitted to the Company as a special limited member owning 0.0015% of the Company.

4. The duties of the Managing Member and the Developer Member will be set forth in a Company Agreement (the "**Company Agreement**"), to be entered into at the Closing (as hereinafter defined) among the Managing Member, the Developer Member, and the Investor Member (as hereinafter defined). The Managing Member shall be indemnified by the Developer Member, the Developer, and the Company for any liabilities incurred under the Company Agreement, except for liabilities incurred as a result of the Managing Member's gross negligence or willful misconduct and in no event shall such indemnification be contingent upon a ruling of a court of law. The Managing Member shall not be required to covenant to undertake actions or obligations that the Developer Member will be required to take under the Company Agreement. The Company Agreement shall contain a provision wherein the Developer Member and Investor Member acknowledge that the obligations of the Managing Member under the Company Agreement are obligations solely of the Managing Member and not the owner of the Managing Member.

B. **Financing**

1. On behalf of the Company, the Developer will submit an application to TDHCA for an allocation of 4% low income housing tax credits ("**Tax Credits**"). The Developer will be responsible for identifying an investor limited partner (the "**Investor Member**") to which it will negotiate the sale of the Tax Credits in exchange for the Investor Member providing equity financing to the Development (the "**Equity**"). The Investor Member will own 99.99% of the Company. AHFC will have the right to review and approve the financing arrangements, including the identity of the Investor Member, and the terms and conditions of the Equity financing documents. The Equity financing documents are expected to include the Company Agreement.

2. On behalf of the Company, the Developer will apply for construction and permanent debt financing for the Development in the form of tax-exempt bond financing (or similar financing products), as well as other financing as may be necessary, which may include, without limitation, leveraged funds from private, non-governmental sources (collectively, the "**Loan**"). AHFC will have the right to review and approve the financing arrangements.

3. The parties anticipate that the Company will enter into documents for the Loan and the Equity financing (including the Company Agreement) concurrently. The execution of the documents related to the Loan and the Equity financing and the funding of the Loan and the Equity financing is collectively referred to as the "**Closing**".

4. The Developer will pay all costs and fees associated with the financing and construction of the Development prior to the Closing, which will include the costs and fees to secure the Loan, the Equity, and the Tax Credits. All pre-Closing costs incurred by the Developer, including without limitation, costs of legal counsel, will be reimbursed to at the Closing from the proceeds of the Loan and the Equity. In the event this MOU is terminated or the transaction fails to close as contemplated herein, the Developer will be solely responsible for all costs described above in this Section B.4, and AHFC and its affiliates will have no responsibility for payment or reimbursement of such costs, unless AHFC defaults on its obligations hereunder and such default is not cured within the 30-day cure period hereinafter set forth, in which case AHFC shall bear its own costs and expenses and neither the Company nor the Developer will be obligated to pay or reimburse AHFC for such costs and expenses.

5. The Developer will negotiate the scope of and provide any guarantees of construction completion, operating expenses, Tax Credit delivery, and the like that may be required in conjunction with the Loan and the Equity financing.

6. The Developer and AHFC will cooperate as reasonably necessary and appropriate with respect to responding to due diligence and underwriting requirements for the Loan and the Equity financing.

C. **Ground Lease; Ad Valorem Tax Exemption.**

1. **Ground Lease.** Title to the fee interest in the land on which the Development is to be located (the "**Land**") will be transferred to AHFC at the Closing and AHFC will, as ground lessor, enter into a 75-year ground lease (the "**Ground Lease**") with the Company, as ground lessee, which will be the owner of the leasehold interest in the Land, as well as the buildings and other improvements located on the Land. The Ground Lease will provide for an upfront rental payment in the amount of the land purchase of \$1,300,000 that will be paid at Closing. Upon termination of the Ground Lease, ownership of the improvements constituting the Development will revert to AHFC or its designee. The terms and conditions of the Ground Lease will be subject to the approval of the Developer. AHFC or its designee will receive a Right of First Refusal and Purchase Option related to the acquisition of the Development, as hereinafter described.

2. **Ad Valorem Tax Exemption.** The contemplated ownership structure is expected to generate an ad valorem tax exemption for the Development (the "**Exemption**"). Prior to entering into the Ground Lease, AHFC will cooperate with the Developer's attorneys to obtain confirmation of the availability of the Exemption from Tarrant Appraisal District. If (i) a pre-determination for approval of the Exemption is not granted prior to the Closing or an opinion satisfactory to the Developer is not rendered by the Developer's attorneys as to the availability of such exemption or (ii) if the Exemption is subsequently terminated once received due to the action or inaction of the Managing Member or AHFC, the Developer shall have the right to remove the Managing Member from the Company and this MOU will terminate and AHFC shall have no further right to participate in the development or ownership of the Development.

It is anticipated that AHFC shall receive annual payments from the Company in lieu of taxes in the amount of \$100,044.

The Ground Lease, combined with the Managing Member's role as the managing member of the Company, the Right of First Refusal, and the Purchase Option, are intended to establish AHFC's equitable ownership of the Development in order for the Development to qualify for the Exemption. AHFC will not have any right to terminate the Ground Lease during Tax Credit compliance period (the "**Compliance Period**") without the approval of the Developer Member, the Investor Member, and any applicable lending entities. In the event the Exemption terminates during the Compliance Period, the Developer Member will have the right to remove the Managing Member and appoint another managing member. The successor managing member shall cause the Company to redeem the removed Managing Member's ownership interest for one hundred dollars.

D. **Long Term Ownership.**

1. Throughout the life of the Company, AHFC will have an option to acquire the Development (the "**Purchase Option**"). The purchase price for the Development under the Purchase Option shall be the greater of: (a) its fair market value and (b) the amount of any outstanding indebtedness of the Development plus other amounts owing pursuant to the Company Agreement, including without limitation, exiting partner loans, exit taxes, and liabilities of the Investor Member and the Developer Member arising from the sale. In addition, if the Purchase Option is exercised during the Compliance Period, the purchase price for the Development will be calculated to include a full return of 125% of all investment capital, payment of any Tax Credit recapture, penalties, interest, and repayment of all indebtedness, including indebtedness owed to the Investor Member and/or the Developer Member, or their respective affiliates. Closing on the sale of the Development shall take place no later than one hundred twenty (120) days after AHFC's exercise of the Purchase Option.

2. In addition, at the end of the Compliance Period, if a third-party offer is made for the purchase of the Development, AHFC shall have a right of first refusal (the "**Right of First Refusal**") to acquire the Development at a price equal to the minimum purchase price under section 42(i)(7)(B) of the Internal Revenue Code of 1986, as amended (the "**Code**"). If AHFC wishes to exercise the Right of First Refusal, it shall do so within one hundred twenty (120) days after receiving notice of the third party offer, and will proceed to close on the purchase of the Development within an additional ninety (90) days after the election to exercise the Right of First Refusal.

3. Notwithstanding the foregoing, after the Compliance Period, the Developer Member shall have a perpetual right to market the Development for sale (which shall include termination of the Ground Lease and transfer of the fee interest in the Land at no or nominal cost); provided that, the purchase price pursuant to any third party offer shall be at least the minimum purchase price under section 42(i)(7)(B) of the Code. In the event that the Developer Member receives such an offer to purchase the Development and the offer is acceptable to the Developer Member and the Company, the Development and the Land shall be sold to such purchaser unless AHFC (a) exercises the Right of First Refusal in accordance with Section D.2 above or (b) within sixty (60) days purchases the economic interest of each partner for an amount equal to that which each partner would otherwise receive under the Company Agreement had the purchase offer been accepted.

4. The Purchase Option and Right of First Refusal (once in effect after the Compliance Period) will remain in effect so long as the Ground Lease is in effect, the Managing Member remains in the Company, and the Managing Member is not in default of its duties in such capacity. The parties acknowledge that AHFC's long-term ownership of the

Development is partially in consideration for the Exemption and agree to work together to implement the necessary ownership elements for AHFC in order to facilitate qualification for the Exemption and to accommodate any Investor Member disposition requirements that differ from those herein set forth.

5. Notwithstanding any of the foregoing, if the Exemption terminates or is not obtainable (other than due to a change in law) and/or the Managing Member is removed as the managing member of the Company, the Right of First Refusal and the Purchase Option and any other rights of AHFC and the Managing Member with respect to long-term ownership of the Development will terminate. In addition, if AHFC has not acquired the Development through the exercise of either the Purchase Option or the Right of First Refusal, the Purchase Option and the Right of First Refusal will both terminate upon the sale of the Development to a third party. AHFC agrees to cooperate with the Developer Member and the Company as necessary in order to facilitate the sale to such third party, including but not limited to, executing a release or termination of the Purchase Option, the Right of First Refusal, and the Ground Lease, and conveyance documents related to the transfer of the Land to the third party, at no or nominal cost.

6. Upon the expiration of the Compliance Period, and in lieu of exercise of the Purchase Option, AHFC or its designee will have an option to acquire the Company interest of the Developer Member for fair market value, as determined by a third-party appraiser mutually agreed upon by the Managing Member and the Developer Member.

E. **Design and Construction.**

1. The Developer, or an affiliate of the Developer, will provide comprehensive development services to the Company pursuant to a Development Agreement to be entered into by the Company and the Developer (or its affiliate).

2. The Developer has provided AHFC with a preliminary development budget for the Development, and will provide AHFC with an updated development budget before AHFC is required to review or approve the terms of any proposed financing. AHFC will have the right to approve the final development budget utilized in connection with the Closing.

3. The Developer will be responsible for obtaining the services of design professionals for the design of the site plan and of the Development. AHFC will be provided copies of the final plans and specifications for the Development, as well as the construction contract. AHFC will have the right to approve the plans and specification and construction contract.

4. In addition to design professionals, the Developer will be responsible for the selection and engagement of other consultants and service providers, including without limitation, environmental consultants, zoning analysts, geotechnical consultants, engineers, contractors, subcontractors, architects, market analysts, appraisers, and legal counsel,

except that legal counsel for AHFC shall be Petruska & Associates, A Professional Limited Liability Company ("P&A") and Hilltop Securities Inc. ("Hilltop"), shall be the Financial Advisor for AHFC.

AHFC and the Contractor (as defined herein) shall be indemnified by the Company, the Developer Member, and the Developer for any liabilities incurred in connection with the Project, except for liabilities incurred as a result of the gross negligence or willful misconduct of AHFC or the Contractor, as applicable, and in no event shall such indemnification be contingent upon a ruling of a court of law.

5. The Developer, with AHFC's reasonable cooperation and assistance when requested, will be responsible for obtaining all governmental approvals and permits needed in order to construct and operate the Development.

F. **Management and Operation.**

The Developer will select a property manager for the Development with consent by the Managing Member with said consent not unreasonably withheld or denied. The terms of its service will be memorialized in a Management Agreement subject to the approval of the Investor Limited Partner, and any lenders, as applicable.

Annually, by no later than December 1 of the preceding fiscal year, the property manager shall provide the Managing Member and the Developer Member with a proposed annual operating budget.

G. **Community Support.**

The Developer will be responsible for interfacing with the local governmental officials and the community in connection with garnering support for the Development.

H. **Fees.**

The Developer, or its affiliate, will be entitled to receive a developer's fee calculated pursuant to TDHCA guidelines (the "**Development Fee**"). The parties agree that 25% of the Development Fee will be paid to an AHFC affiliate (the "**Co-Developer**"), and 75% of the Development Fee shall be paid to the Developer, or its affiliate on a pro-rata basis. The Developer shall enter into a development subcontract with the Co-Developer to document payment of said affiliate's share of the Development Fee.

The Company shall pay on each January 1 an asset management fee of \$10,000 per year to the Managing Member to defray expenses incurred.

If the Bonds are expected to be outstanding for less than 10 years then the annual administrative fee of .125% of the original par amount of the Bonds payable annually to

AHFC shall be paid in advance with 10-years of capitalized administrative fees being due at the Bond Closing such fee to be calculated using a 1% present value rate.

I. Distributions, Allocations and Expenses.

1. The parties anticipate that cash available for distribution by the Company will be utilized:

- (i) To pay the Investor Member for certain priority reimbursements;
- (ii) To replenish reserves as necessary;
- (iii) To pay the Asset Management fee to Managing Member;
- (iv) To pay the Development Fee;
- (v) To reimburse guarantors to the extent of reimbursable guaranty payments to the Company;
- (vi) To pay 10% of the remaining available cash to the Investor Limited Partner; and
- (vii) To pay the remaining available cash 37.50% to the Managing Member and 62.50% to the Developer Member.

2. The parties anticipate that sale or refinancing proceeds available for distribution by the Company will be utilized:

- (i) To pay the Investor Member for certain priority reimbursements;
- (ii) To pay any Development Fee;
- (iii) To reimburse guarantors to the extent of reimbursable guaranty payments to the Company;
- (iv) To pay 10% of the remainder to the Investor Limited Partner; and
- (v) To pay the remaining proceeds 37.50% to the Managing Member and 62.50% to the Developer Member.

3. It is anticipated that Company allocations of tax items will be made such that the Investor Member generally will receive 99.99% of all income, gain, loss, deduction, and credit.

4. All expenses incurred by AHFC or its affiliates in connection with this MOU and the pursuit of the Development, including but not limited to costs of legal counsel, will be included in the Development's development budget and reimbursed by the Company to AHFC concurrently with the Closing; provided, however, if AHFC defaults on its obligations hereunder and such default is not cured within the 30-day cure period hereinafter set forth, AHFC shall bear its own expenses and neither the Company nor the Developer will be obligated to pay or reimburse AHFC for such expenses.

5. P&A shall receive its standard fee for this partnership transaction of SEVENTY FIVE THOUSAND AND 00/100 DOLLARS (\$75,000) of which \$10,000 is to be paid by the Developer or the Company at the time of execution of this MOU and the balance to be paid by the Developer or the Company at the entrance by AHFC into the Company.

6. Hilltop shall receive its standard fee for this partnership transaction of THIRTY FIVE THOUSAND AND 00/100 DOLLARS (\$35,000) of which \$5,000 is to be paid by the Developer or the Company at the time of execution of this MOU and the balance to be paid by the Developer or the Company at the entrance by AHFC into the Company.

J. **Miscellaneous.**

1. In instances in which a party hereto has the right to provide its consent or approval, or render its determination, judgment, satisfaction, or decision, such party will act in good faith and such consent, approval, determination, judgment, satisfaction, or decision (or the denial thereof, as the case may be) shall not be unreasonably withheld, delayed, or conditioned.

2. Any notice, request, demand, instruction, or other document to be given or served hereunder shall be in writing and shall be (a) delivered personally, (b) sent by overnight express courier, postage prepaid, or (c) sent electronically (email), each addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally, by overnight courier or by facsimile or electronically (with proof of receipt of delivery). A party may change its address for receipt of notices by service of a notice of such change in accordance herewith. If any deadline under this Agreement falls on a Saturday, Sunday, or legal holiday, the deadline shall be extended to the next business day.

AHFC: Arlington Housing Finance Corporation
 MS 28-0100
 501 W. Sanford, Suite 20
 Arlington, TX 76011-7092
 mindy.cochran@arlingtontx.gov

Developer: MVAH Development LLC
 9100 Centre Pointe Drive, Suite 210
 West Chester, Ohio 45069
 Brian.McGeady.@mvahpartners.com
 Darren.Smith@mvahpartners.com

3. This MOU reflects the entire understanding between the parties and may only be amended in writing, signed by both parties. This MOU is a contract and not merely an "agreement to agree".

4. Each party hereto is prohibited from assigning any of its interests, benefits, or responsibilities hereunder to any third party, without the prior written consent of the other party. Notwithstanding the foregoing, the parties acknowledge that it is anticipated that an affiliate of the Developer may perform some or all of the activities of the Developer set forth in this MOU. For purposes of this MOU, any references to "the Developer" shall be deemed to refer, as applicable, to any affiliate thereof that actually performs the activities of the Developer herein set forth.

5. The parties agree to execute such documents and do such things as are necessary or appropriate to facilitate the development of the Development and the consummation of their agreement herein.

6. This MOU may be executed in several counterparts, each of which will be deemed to be an original copy and all of which together will constitute one agreement binding on all parties hereto, notwithstanding that all the parties did not sign the same counterpart.

7. THIS MOU IS GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF ITS CHOICE AND CONFLICT OF LAW PRINCIPLES.

8. In case any one or more of the provisions contained in this MOU 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 MOU will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

9. The parties hereto submit exclusively to the jurisdiction of the state and federal courts of Tarrant, Texas, and venue for any cause of action arising hereunder shall lie exclusively in the state and federal courts of Tarrant County, Texas.

10. Should any party employ an attorney or attorneys to enforce any of the provisions hereof, to protect its interest in any manner arising under this MOU, or to recover damages for the breach of this MOU, the non-prevailing party in any action pursued in courts of competent jurisdiction (the finality of which is not legally contested) agrees to pay to the prevailing party all reasonable direct costs and expenses, including specifically, but without implied limitation, reasonable attorneys' fees, expended or incurred by the prevailing party in connection therewith.

11. The subject headings contained in this MOU are for reference purposes only and do not affect in any way the meaning or interpretation hereof.

12. This MOU will continue until terminated upon the occurrence of one of the following conditions:

(i) If AHFC and the Developer sign a mutual consent to terminate this Agreement, this MOU shall terminate on the date set forth in such consent;

(ii) If the Closing has not occurred by December 31, 2021, either party may immediately terminate this MOU by providing written notice thereof to the other party;

(iii) If either party breaches its obligations under this MOU, the non-breaching party provides the breaching party written notice of such fact and a 10-day opportunity to cure, and the breaching party fails to do so, then the non-breaching party may terminate this MOU by providing written notice thereof to the breaching party;

(iv) If the Developer determines that the transactions contemplated by this MOU are no longer feasible, the Developer may terminate this MOU by delivery of written notice thereof to AHFC.

(v) If either party files for bankruptcy protection, makes an assignment for the benefit of creditors, has a receiver appointed as to its assets, or generally becomes insolvent, then the non-bankrupt party may terminate this MOU by providing written notice thereof to the bankrupt party; or

(vi) If a party is ineligible to participate in the Tax Credit program pursuant TDHCA's rules, then the other party may terminate this MOU by providing written notice thereof to the party found to be ineligible.

Upon termination of this MOU for any of the reason cited above, neither party will have any ongoing obligation to the other with respect to this MOU and the Development, except for the obligation of the Developer to reimburse AHFC for costs as provided herein.

In addition, the provisions of this MOU with respect to the Development will be terminated and suspended when AHFC and the Developer and their affiliates, as applicable, enter into definitive agreements with respect to the governance of the Company and the development, construction, financing, and operation of the Development as contemplated herein, including but not limited to the Loan and Equity documents.

13. This Memorandum shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, legal representatives, successors, and assigns where and as permitted by this Memorandum.

14. In case any one or more of the provisions contained in this Memorandum shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Memorandum shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

15. This Memorandum constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

16. The headings used in this Memorandum have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Memorandum.

17. Neither party may assign this Memorandum without the prior written consent of the other parties, except as may otherwise be provided herein.

18. Should either party hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Memorandum or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party all reasonable attorneys' fees and all court costs in connection with said proceeding.

19. This Memorandum may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, this Memorandum may be executed by facsimile signatures and such signatures shall be deemed an original.

20. This Memorandum may not be modified or amended except by a written instrument signed by both of the parties hereto and referring specifically to this Memorandum. This Memorandum and all obligations hereunder shall terminate at such time as (i) subsequent to the closing of the Financing all obligations hereunder have been fully performed; or (ii) prior to the closing of the Financing if it is determined that the Partnership will not qualify for the Tax Exemption.

21. Each party shall, upon the request of the other party, execute, acknowledge, and deliver any and all instruments reasonably necessary or appropriate to carry into effect the intention of the parties as expressed in this Memorandum.

22. The parties acknowledge that each party and its counsel have reviewed and revised this Memorandum and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Memorandum or any amendments or exhibits hereto.

24. Neither Party shall, directly or indirectly, through an owner, employee, agent, representative, or affiliate, enter into discussions with (or consummate an agreement with)

any party not a signatory to this agreement with respect to the performance of the terms of this Memorandum as set forth herein.

25. Each Party shall consult the other and must agree as to the timing, content, and form before issuing any press release or other public disclosure related to this Memorandum or the Development. However, this section does not prohibit either Party from making a public disclosure regarding this Memorandum and the Development if, in the opinion of its legal counsel, such disclosure is required by law.

26. Should either party hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Memorandum or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party all reasonable attorneys' fees and all court costs in connection with said proceeding.

27. The parties acknowledge that the Managing Member, AHFC, and its affiliates will be represented in this transaction by P&A in a legal capacity and Hilltop in a financial advisory capacity. The Company, the Developer, the Developer Member, and their affiliates will be represented by Coates Rose, P.C. and will not be entitled to rely on P&A or Hilltop for representation in this matter and acknowledge that no financial advisory relationship will exist among the Company, the Developer, the Developer Member, and their affiliates and Hilltop and P&A.

[Signature Pages Follow]

EXECUTED to be effective as of the date above shown.

Arlington Housing Finance Corporation,
a public nonprofit housing finance corporation

By: _____
Name:
Title:

DRAFT

MVAH DEVELOPMENT LLC,
a Georgia limited liability company

By: _____
Name: _____
Title: _____

DRAFT