

PILOT KNOB AFFORDABLE HOUSING AGREEMENT

STATE OF TEXAS §
COUNTY OF TRAVIS §

WHEREAS, on March 22, 2012, the City Council of the City of Austin (“the City”) approved by ordinance five Consent Agreements that allowed for the creation of Pilot Knob Municipal Utility Districts (“MUDs”) Nos. 1, 2, 3, 4, and 5, the other parties to the agreements being the developer Carma Easton, LLC, a limited liability company and its successors and assigns of any portion of the Property (“Carma”), and the governing bodies of each of the MUDs; and

WHEREAS, in each of the five MUD Consent Agreements Carma agreed, among other things, to provide affordable housing in the MUDs to meet the City’s affordable housing goals; and

WHEREAS, at the time the MUD Consent Agreements were entered into, the land within the MUDs was annexed into the limited purpose jurisdiction of the City and assigned an interim base district zoning classification of interim-rural residence (I-RR) district and interim-single family residence small lot (I-SF-4A); and

WHEREAS, in each of the MUD Consent Agreements, Carma agreed to prepare and submit a proposed Planned Unit Development (“PUD”) for the project for the City’s review and consideration in accordance with the City’s Land Development Code; and

WHEREAS, the City approved initial permanent zoning for the land within the five MUDs and assigned each of them PUD base district zoning in Ordinance No. 2016_____; and

WHEREAS, Ordinance No. 2016_____ provides that Carma must meet certain affordable housing goals in return for obtaining the PUD base district zoning and that the details of how Carma will comply with the affordable housing requirements will be set forth in a separate agreement; and

WHEREAS, the purpose of this Affordable Housing Agreement (“Agreement”) is to document how Carma will comply with the affordable housing requirements in the zoning ordinance; and

NOW, THEREFORE, for and in consideration of the mutual promises hereinafter expressed and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties enter into this Agreement and covenant and agree as follows.

Section I. Definitions

When used in this Agreement:

Affordable Lot means a residential lot depicted on a City-approved plat on which an Affordable Ownership Unit is located.

Affordable Ownership Unit means 1) an individual residential ownership unit constructed on

an Affordable Lot and which meets the ownership affordability requirements of this Development Agreement or 2) all other forms of residential dwelling units including but not limited to units in a condominium-style project, units in a townhome-style project, and units in a duplex-style project.

AHFC means the Austin Housing Finance Corporation, a public instrumentality and corporation created by the City of Austin under the authority of Texas Local Government Code Chapter 394.

Community Land Trust or (CLT) means the arrangement created by AHFC under which AHFC owns an Affordable Lot and leases the Affordable Lot to a homeowner under a long term ground lease that specifies, among other things, resale restrictions to ensure long term affordability of the home.

Force Majeure means acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kinds of the government of the United States, the State of Texas, Travis County, or the City of Austin (but only for orders which are not City caused delays), or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, or other causes not reasonably within the control of the party claiming such inability.

Guidelines means the departmental guidelines NHCD establishes that set forth how the CLT will be operated and how home buyers qualify to purchase an Affordable Ownership Unit.

Individual Residential Ownership Unit means all forms of residential dwellings including, but not limited to, single family housing units whether attached or detached, units in a condominium-style project, units in a townhome-style project, and units in a duplex-style project.

Median Family Income (“MFI”) means median family incomes for the Austin Metropolitan Statistical Area, adjusted for family size, and any similar successor designation, which demonstrates median family income and is nationally recognized as a benchmark for determining the affordability of housing.

MUD Consent Agreements means the five consent agreements, as amended, entered into by the City of Austin, Carma Easton, LLC, a limited liability company, and Pilot Knob Municipal Utility District (“MUD”) Nos. 1, 2, 3, 4, and 5 as reflected in Ordinance Nos. 20120322-031, 20120322-032, 20120322-033, 20120322-034, and 20120322-035 on file with the Clerk of the City of Austin.

NHCD means the Neighborhood Housing and Community Development Department of the City of Austin or successor department.

Ownership Affordability Requirement means the requirement, more specifically set forth in this Agreement, that Carma provide to the City ten percent of all Individual Residential Ownership Units as affordable within the PUD for purposes of achieving long-term housing affordability.

PUD or PUD Ordinance means the planned unit development base zoning district designation given to the property covered by this Agreement in Ordinance No. 2016_____, on file with the Clerk of the City of Austin, and includes the land to which the PUD designation applies.

S.M.A.R.T. Housing Program means the affordable housing requirements codified in Austin City Code Chapter 25-1, Article 15.

Section II. Parties

The parties to this Agreement are the City and Carma and its successors and assigns of any portion of the Property in the PUD, collectively known as “the Parties”.

Section III. Property

The property that is the subject of this Agreement is that certain tract or parcel of land contained within the PUD, containing approximately 2,216.978 acres located in Travis County, Texas, as further described by the metes and bounds in Exhibit A attached to and incorporated into this Agreement.

Section IV. Affordable Lot Requirements

If Carma or any of its successors in interest, such as but not limited to a builder, plats a residential development, this section describes the timing, sequence of events, and the manner in which Carma or the builder will identify Affordable Lots and then submit certain information for review and approval by NHCD to ensure that the Ownership Affordability Requirement is spread throughout the PUD. To that end, as Carma begins to file the necessary applications with the City for plat approval, the Parties agree that:

- (a) Carma must notify NHCD in writing at NHCD’s address noted in Subsection (c) of Section XIV below on the same day it files an application for final plat approval.
- (b) In the same notices that Carma provides to NHCD under (a) of this section, Carma shall also include a copy of the proposed final plat and shall identify in writing on the proposed final plat, but not the final plat, those lots it proposes to meet the Ownership Affordability Requirement and shall provide that information in writing to NHCD.
- (c) Lots count towards meeting the Ownership Affordability Requirement only when NHCD accepts in writing those lots Carma has proposed on a given proposed final plat to meet its Ownership Affordability Requirement. In addition to all other requirements imposed by this Agreement, Affordable Lots must meet the criteria in (1) through (5) immediately below. For an individual plat, Affordable Lots:
 - (1) may not be shown on an official FEMA map as being located within a Special Flood Hazard Area;
 - (2) must contain adequate drainage to prevent the buildup of stagnant or standing water;
 - (3) may not contain environmental hazards or contamination issues such as brownfields, lead paint, or illegal dumping;
 - (4) may not be in need of any variance, special exception, or waiver of any requirement under the City’s land development code, the City’s criteria manuals, or any other law; and

- (5) must be integrated throughout the area of the individual plat to avoid undue concentration of Affordable Lots in one area or near heavily trafficked areas and, for purposes of this subsection, this means that: (i) no more than eight (8) Affordable Lots may be next to each other or share a property line; and (ii) no more than forty percent (40%) of the individually platted lots in a final plat may contain Affordable Lots.
- (d) Not later than three (3) days after NHCD provides written approval of the Affordable Lots, Carma shall execute in favor of the City an option giving the City the right to buy each Affordable Lot, using the form attached as Exhibit B. The option shall encumber each of the Affordable Lots and shall be recorded by Carma in the Official Public Records of Travis County, Texas. The option period for each individual lot begins to run when the City makes the monetary payment of \$100.00 described below, and the City must make the monetary payment within sixty (60) days of both parties executing the option agreement. In no event may Carma sell an Affordable Lot to someone other than the City before executing the option in favor of the City and receiving the City's purchase price of \$100.00 described below.
- (e) The option shall run with the land and bind Carma and any builder or other successor in interest to whom Carma sells any Affordable Lot.
- (f) Once the option period on an Affordable Lot begins to run, the option period expires upon the earlier of:
- (1) three years after the date that Carma provides written notice to the City and NHCD that it has conveyed title to an Affordable Lot to a builder; or
 - (2) the date when the City notifies Carma (or builder, if applicable) that it will not exercise the option; or
 - (3) the date when a homebuyer meeting the income eligibility requirements of this Agreement and the CLT buys and closes on an Affordable Ownership Unit located on an Affordable Lot.
- (g) The independent consideration for the option on an Affordable Lot is \$100.00. Carma acknowledges this to be adequate and sufficient consideration to form a binding option agreement, especially when taking into account the value added by the City through its long term oversight and coordination of the affordable housing being provided over the life of the PUD. This oversight and coordination includes, but is not limited to, investment of City time and resources in providing homebuyer education to prospective purchasers, developing a constant and ready supply of eligible home purchasers, identifying mortgage financing for homebuyers, marketing and outreach, assistance at closings, long term compliance monitoring, and activities related to the resale of CLT units.
- (h) Carma and builders may exchange an Affordable Lot previously approved by NHCD under this Agreement (an "Exchanged Affordable Lot") with an alternate Affordable Lot to be approved by NHCD as provided in this Agreement, provided that such an exchange is accomplished prior to the Exchanged Affordable Lot (or an Affordable Ownership Unit located or to be located on such Exchanged Affordable Lot) being subject to a written

contract for sale with an income-eligible qualified home buyer. The Parties also intend that a lot on a final plat, not previously identified as an Affordable Lot proposed to meet the Ownership Affordability Requirement, will be able to subsequently qualify as an Affordable Lot and count towards meeting the Ownership Affordability Requirement if such lot (i) is subsequently identified in writing by Carma or the builder as a new Affordable Lot that is proposed to meet the Ownership Affordability Requirement, (ii) meets the criteria for an Affordable Lot specified in paragraph (c) of Section (IV) above, (iii) is approved by NHCD in writing as a new Affordable Lot in accordance with the approval requirements specified in this Section IV and (iv) a restrictive covenant is executed on the alternate Affordable Lot and the restrictive covenant on the Exchanged Affordable Lot is terminated.

Section V. Previously Approved Plats

The Parties acknowledge that Carma has already received final approval from the City, in its governmental capacity, for several final plats on land that is part of the Property. With respect to those final plats that the City has already approved, Carma will not be able to strictly comply with the provisions of Section IV of this Agreement that require notification to the City when Carma files an application for final plat approval. For those final plats that have already been approved by the City prior to the effective date of this Agreement, Carma must still meet its Affordable Ownership Requirement, but that requirement will be transferred to the other sections of the PUD so that, when the entire PUD is fully developed, Carma will have provided ten percent (10%) of all ownership units in the PUD as Affordable Ownership Units.

Section VI. Non-CLT Affordable Ownership Units

This section describes the timing, sequence of events, and the manner in which Carma or a builder will identify one or more Affordable Ownership Units in a development that does not follow the Affordable Lot approach set forth above. This model includes projects such as condominium-style projects, units in a town-home style project, and units in a duplex-style project. To that end:

- (a) If Carma or a builder submits a site plan under City Code Chapter 25-2 (*Site Plans*), Carma or the builder shall identify the residential units proposed as Affordable Ownership Units. Similarly, if a building permit application is submitted, Carma or the builder shall identify any residential units proposed as Affordable Ownership Units. In any of these events, Carma or the builder shall provide written notification to NHCD at the same time it files a site plan or building permit application. The notice shall provide a detailed description of the location and size of the proposed Affordable Ownership Unit so that NHCD knows the precise unit or units proposed to meet the requirements of this Agreement.

- (b) All proposed Affordable Ownership Units must (i) meet the requirements set forth in Section IV(c)(1)-(4) hereof, (ii) contain a representative number of bedrooms and bathrooms as other units in the building or complex, and (iii) be integrated throughout the building or complex to avoid undue concentration of Affordable Ownership Units in one area or near heavily trafficked areas. For purposes of this subsection, this means that: (i) no more than eight (8) Affordable Ownership Units may be next to each other; and (ii) no more forty percent (40%)

of units in a building may include Affordable Ownership Units. A proposed Affordable Ownership Unit counts towards meeting the Ownership Affordability Requirement only when approved by NHCD in its reasonable discretion.

- (c) Not later than three (3) days after NHCD provides written approval of Affordable Ownership Units, Carma shall execute a restrictive covenant preserving the affordability of the Affordable Ownership Units. The restrictions shall encumber each of the Affordable Ownership Units and be recorded by Carma in the Official Public Records of Travis County, Texas. The restrictions shall run with the land to ensure long-term affordability of each Affordable Ownership Unit.

Section VII. Affordable Ownership Units

The amount, quality, and location of the Affordable Ownership Units Carma builds are an essential part of this Agreement. To that end, Carma agrees to build and sell Affordable Ownership Units as follows:

- (a) In the CLT, Affordable Ownership Units may be built only on lots described in Section IV above. For other developments, an Affordable Ownership Unit must meet the criteria in Section VI.
- (b) Before Carma or a builder may begin construction of one or more Affordable Ownership Units, Carma or a builder must submit to NHCD, and obtain written approval from NHCD, of either building specifications or a Master Set of Plans for the construction of the Affordable Ownership Unit(s). The purpose of this requirement is to ensure that Ownership Affordability Units are constructed in a manner and with a degree of quality so that they are indistinguishable from market rate residential units.
- (c) Each Affordable Ownership Unit shall have substantially similar architectural design and restrictions as other residential units offered for sale to the general public in the same neighborhood in which the Affordable Ownership Unit is located. To ensure this, the building specifications, or Master Set of Plans as appropriate, must address matters such as quality of construction materials to be used, floor layouts, types and quality of finishings, landscaping, quality of fencing, and related items. Additionally, Carma or a builder must design Affordable Ownership Units with a logical and functional room layout so that an Affordable Ownership Unit has adequate space for normal living and adequate circulation pathways through the unit based on, among other things, a reasonable furniture configuration.
- (d) The design and construction of Affordable Ownership Units must be functionally equivalent to market rate units. When fixtures and finishes (such as kitchen cabinets, countertops, dishwasher, garbage disposal etc.) are included in market rate units, equivalent features must be included in the Affordable Ownership Units as well.
- (e) Carma or a builder must notify the NHCD, in the manner provided for in Subsection XIV(c) of any changes to buildings specifications or a Master Set of Plans before making those changes, and NHCD must approve those changes in writing before they become

effective.

- (f) Once the affordable units are constructed, any deviations from these standards not approved ahead of time in writing by NHCD may result in the City not accepting a unit as an Affordable Ownership Unit.

VIII. Income Eligible Home Buyers

To ensure that Affordable Ownership Units are sold to qualifying individuals:

- (a) Carma will ensure that at least ten percent of the total number of residential ownership units Carma or a builder sells as owner-occupied residential housing units located in the PUD are sold as Affordable Ownership Units which means, among other things, that the unit is priced at the time of initial offering for sale to an income eligible home buyer at a price affordable to households with incomes at eighty percent of or below the median family income in the Austin metropolitan statistical area.
- (b) The initial sales prices will be based upon the following formula:
 - (1) For a two bedroom home: Income of 3 person household at 80% MFI X 3 = Maximum Sales Price. Example: $\$56,050 \times 3 = \$168,150$ Maximum Sales Price.
 - (2) For a three bedroom home: Income of a 4 person household at 80% MFI X 3 = Maximum Sales Price.
 - (3) For a four (4) bedroom home: Income of a 5 person household at 80% MFI X 3 = Maximum Sales Price.
- (c) Affordable Ownership Units must be sold to households with incomes no greater than 80% of the MFI.
- (d) Carma or a builder may sell an Affordable Ownership Unit only to a homebuyer who qualifies for a mortgage and meets the CLT requirements, if applicable.

Section IX. Carma Duty to Ensure Builder Compliance

The Parties acknowledge that Carma will contract with private builders to construct Affordable Ownership Units and that, for purposes of obtaining interim construction financing to build an Affordable Ownership Unit, Carma will convey title to an individually platted Affordable Lot or other land to the builder. With this in mind, the Parties agree that:

- (a) When Carma sells an Affordable Lot or other land to a builder, Carma must do so by written contract, and Carma must provide written notice of that sale to NHCD within 5 (five) days of both Carma and Builder executing it.
- (b) Additionally, when Carma sells an Affordable Lot or other tract of land to a builder, it is Carma's duty under this Agreement to ensure that:

- (1) Both Carma and the builder carry insurance policies that meet the City's standard requirements as further set forth below in Section XII;
 - (2) The builder (i) submits to NHCD a completed S.M.A.R.T. Housing application, and (ii) obtains S.M.A.R.T. Housing certification from NHCD;
 - (3) The builder complies with the records retention and audit requirements of subsection (l) of Section XIV of this Development Agreement; and
 - (4) It conducts periodic inspections to ensure that a builder is complying with the provisions of this Agreement applicable to the builder including, but not limited to, ensuring that the builder is constructing an Affordable Ownership unit in compliance with approved building specifications or an approved Master Set of Plans.
- (c) If a builder to which Carma has conveyed an Affordable Lot or land goes out of business, files bankruptcy, is placed in receivership, loses control or title to the Affordable Lot or Ownership Unit before the City exercises its option to purchase the lot or an eligible consumer purchases a home, or if the builder does not build an Affordable Ownership Unit in compliance with approved building specifications or an approved Master Set of Plans, then that Affordable Lot and unit will no longer count towards Carma meeting its Ownership Affordability Requirement. In that case, Carma will have to provide, subject to the City's written approval as provided for in Section IV of this Development Agreement, another Affordable Lot or Ownership Unit to meet the Ownership Affordability Requirement.

Section X. The CLT

The City, through its staff at NHCD, will create Guidelines to facilitate and support the sale of Affordable Ownership Units within the PUD. The content of, and the amount of resources the City invests in, the CLT is at the sole discretion of City, but the Guidelines that NHCD staff creates will be consistent with this Agreement. The Guidelines will include strategies and methods for:

- (a) Providing Homebuyer Education;
- (b) Developing an adequate and constant amount of Income-Eligible Buyers, which includes:
 - (1) Acting as a point of contact for realtors and potential buyers to explain the CLT and its Guidelines and processes;
 - (2) Communicating to eligible participants who have completed either the City's Housing Smarts program or other City-approved homebuyer education and counseling program to market available units and explain the guidelines;
 - (3) Establishing an on-line application process for potential homebuyers to submit their interest for the purchase of an Affordable Ownership Unit to develop an adequate and constant supply of eligible buyers;
 - (4) Assisting potential buyers to complete the applications for mortgages and any down

payment or other subsidy assistance and explaining the structure of the purchase of an Affordable Ownership that is subject to a CLT ground lease, which includes:

- (i) Assisting potential buyers to complete the Austin Housing Finance Corporation application and to submit the resale or new construction contract with a prequalification letter and required earnest money deposit;
 - (ii) Assisting potential buyers in providing required income verification documents; and
 - (iii) Assisting potential buyers to assemble the required documents for submission to a mortgage loan officer; and
 - (iv) Approving buyers who are eligible to participate in the CLT by verifying, among other things, income eligibility, household size, and establishing a prospective homebuyer's need to participate in the CLT.
- (5) Ensuring that all sales closings occur within established timelines;
- (c) Identifying Mortgage Financing;
 - (d) Advertising the CLT and Outreach;
 - (e) Assisting homebuyers with closings, which includes the preparation of legal documents and rights of first refusal;
 - (f) Long Term Monitoring; and
 - (g) Resale of CLT Units.

Section XI. Purchase of Affordable Lots and Units by Consumers and/or the City.

This section describes the process where Carma or a builder will sell an Affordable Ownership Unit to a qualified home buyer and, at the same time, convey title to the underlying Affordable Lot to AHFC for inclusion in the CLT. To that end:

- (a) The City may elect to exercise its option to purchase an improved Affordable Lot if and when there is an available home buyer. The purchase price of the improved Affordable Lot shall be the appraised value of the lot discounted by 20 (twenty) percent of the appraised value, based on an appraisal performed by an independent third-party appraiser selected by the City. The appraisal must be dated not later than 60 (sixty) days after the date the City notifies Carma that it will exercise its option to purchase the Affordable Lot.
- (b) Notwithstanding any other provision of this Agreement, if the City does not close within any of the applicable periods described above or to accept within the option period, the option expires and Carma or builder must sell an Affordable Ownership Unit and the Affordable Lot on which the Affordable Ownership Unit is located in compliance with the MUD Consent Agreements by pricing the Affordable Ownership Unit and the Affordable Lot at the time of initial offering for sale at a price that is affordable to a household with an

income level of 80 (eighty) percent of the median family income in the Austin Metropolitan Statistical Area.

- (c) Notwithstanding any other provision of this Agreement, if the City timely notifies Carma (or builder, if applicable) that it elects not to exercise the option right, the option expires and Carma or builder must sell an Affordable Ownership Unit and the Affordable Lot on which the Affordable Ownership Unit is located in compliance with the MUD Consent Agreement by pricing the unit at the time of initial offering for sale at a price that is affordable to a household with an income level of 80% of the median family income in the Austin Metropolitan Statistical Area.
- (d) For those lots no longer subject to the purchase option as described in Subsections (b) and (c) of this section, builder may construct a home according to its own plans and specifications provided the home complies with all land development code and building code requirements and the affordability requirements in the MUD Consent Agreements.

XII. Insurance.

- (a) Carma shall, and with respect to Sections (a)(i), (ii), (iii), (v) and (vi), as applicable, shall require its contractors to, carry and maintain throughout the term of this Agreement (except for the insurance required by Section (a)(iv) which will be in effect until at least one (1) year following Completion of Construction of Improvements) the following insurance policies:
 - (1) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.
 - (2) Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Carma, or its agents or contractors on Carma's behalf, will utilize with respect to the Property in a minimum amount of \$1,000,000, combined single limit.
 - (3) Commercial General Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and/or property damage, products and completed operations with a minimum aggregate of \$1,000,000 and blanket contractual coverage, independent contractors' coverage and explosion, collapse and underground (X, C & U) coverage.
 - (4) Pollution Legal Liability Insurance coverage approved by the City and listing the City as an additional insured with a minimum limit of \$10,000,000.
 - (5) For contractors/subcontractors providing professional services under this Agreement, Engineers' Professional Liability Insurance with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to

plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured.

- (6) For work that involves asbestos or any hazardous materials or pollution, the following will be in addition to the other insurance required hereunder:
- (i) Asbestos abatement endorsement or pollution coverage to the Commercial General Liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy cannot exclude asbestos or any hazardous materials or pollution and shall provide "occurrence" coverage without a sunset clause.
 - (ii) Pollution coverage in accordance with Title 49 CFR 171.8 requiring an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy that provides coverage for bodily injury and property damage arising out of the transportation of asbestos or other hazardous materials. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

The insurance required under this subsection (vi) will only be required concerning the entity which is actually performing such work. For example, if Carma's contractor (instead of Carma) is performing such work, the contractor, not Carma, will be required to carry such insurance.

- (b) Neither Carma nor its contractors will cause any insurance required hereunder to be canceled or lapse during the term of this Agreement. With respect to Sections (a)(i), (ii) and (iii), insurance coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of B+VII or better or otherwise acceptable to the City. Additionally with respect to Sections (a)(i), (ii) and (iii), all policies will contain a provision in favor of the City waiving subrogation or other rights of recovery against the City, to the extent available under Applicable Laws, and will be endorsed to provide the City with a 30-day notice of cancellation. The City will be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies. All policies will provide primary coverage as applicable, with any insurance maintained by the City being excess and non-contributing. Carma will submit a certificate of insurance to the City providing evidence of insurance coverage required by this Agreement. Carma will be responsible for (i) overseeing its contractors with respect to such contractors' obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such contractors' insurance certificates evidencing the insurance coverages required hereunder.

- (c) All endorsements, waivers, and notices of cancellation as well as the certificate of insurance shall indicate the City as an additional insured and be delivered to: City of Austin, Economic Development Department, Attn: Director, P.O. Box 1088, Austin, Texas 78767, or such other address as the City may notify Carma in writing.
- (d) Carma shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in the insurance policies to be carried hereunder by Carma. The insurance coverages required under this Agreement are required minimums and are not intended to limit or otherwise establish the responsibility or liability of Carma or the City under this Agreement.

Section XIII. Default

- (a) If one Party believes the other to be in default of this Agreement, the non-defaulting party must give written notice to the other party specifying the event of default and extending the other party 30 (thirty) days to cure the default or, if the curative action cannot reasonably be completed within 30 (thirty) days, thirty days to commence the curative action and thereafter to diligently pursue the curative action to completion. The 30 (thirty) day period for notice and opportunity to cure must pass before the non-defaulting party may initiate any remedies due to the alleged default. Further, the non-defaulting party must mitigate any direct and consequential damages arising from a default to the extent reasonably possible under the circumstances.
- (b) If a default is not cured within the 30 (thirty) day cure period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot be reasonably completed within thirty days, the non-defaulting party may pursue all remedies that it deems appropriate to address the default. Carma acknowledges and agrees that the City has additional remedies that include:
 - (1) For all or any portion of the PUD: (i) the right to temporarily or permanently withhold or refuse to issue or approve City permits, certificates of occupancy, or future water and wastewater service tap connections; (ii) the right to refuse to review construction plans; and (iii) the right to refuse to release site plans;
 - (2) The right of the City to file a lien against Carma's applicable property that has not been sold to a third party for an unpaid amount due to the City on a pro rata basis per acre, provided, however, such lien shall attach only upon recordation of a notice thereof in the Travis County Official Public Records which notice shall include the name of the lien claimant (City), a description of Carma's property, a description of the amount of the lien claim at that time, and a statement that the lien is claimed pursuant to the provisions of this Agreement;
 - (3) Liquidated damages for each Affordable Lot and Affordable Ownership Unit that Carma fails to provide, with the liquidated damages based on the appraised value of the Affordable Lot and/or the Affordable Ownership Unit, with the appraised value to be determined by an independent third-party appraiser selected by the City; and
 - (4) The right to require that Carma include more Affordable Lots and Affordable

Ownership Units elsewhere within the PUD to meet the Ownership Affordability Requirement.

- (c) Subject to first complying with the provisions in (d) below, upon the failure of either party to comply with the provisions of this Agreement and the opportunity to cure a default, the other party shall have the right to sue for default and to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief which the non-defaulting party may deem appropriate. Any remedy or relief described in this Agreement shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.
- (d) Prior to filing suit, the parties hereto agree to mediate or use any other alternative dispute resolution process agreed to by the Parties to in good faith resolve any dispute which may arise under the terms of this Agreement.
- (e) Carma acknowledges and agrees that the manner and degree to which the City performs the activities in Section X (The CLT) shall at no time give rise to a breach or a material breach of this Agreement unless Carma shows that the City has acted fraudulently or in bad faith.

Section XIV. General Requirements

- (a) **Carma shall indemnify and hold the City and its respective officers, directors, employees, and agents harmless from, and reimburse the City and its respective officers, directors, employees, and agents for and with respect to, all claims, demands, actions, damages, losses, liabilities, judgments, costs and expenses, including, without limitation, reasonable legal fees and court costs (each a "Claim") which are suffered by, recovered from or asserted against the City or its respective officers, directors, employees, and agents to the extent any such Claim arises from or in connection with any Carma default or any alleged, established, or admitted negligent or wrongful act or omission of Carma or any builder or any agents, contractors, representatives, or employees of Carma with respect to the performance of this Agreement provided, however, that such indemnification and hold harmless, and reimbursement does not include any Claim to the extent caused by, arising from, or in connection with the established or admitted negligent or wrongful act or omission of the City and/or any agents, contractors, representatives, or employees of the City.**

Further, except for incidences of fraud or bad faith committed by the City or AHFC, Carma releases the City and AHFC and their respective officers, directors, employees, and agents for and with respect to, all claims, demands, actions, damages, losses, liabilities, judgments, costs and expenses, including, without limitation, reasonable legal fees and court costs (each a "Claim") which are suffered by, recovered from or asserted against the City or its respective officers, directors, employees, and agents to the extent any such Claim arises from or in connection with for the manner in which the City and AHFC manage the CLT program or the activities under this Agreement and for any decision the City or AHFC officers, directors, employees, and agents make in determining that a person does not meet the income or related criteria for participating in the CLT

program or this Agreement.

- (b) No third party rights are created by this Agreement except for those rights created for and to the benefit of the Austin Housing Finance Corporation or any other entity designated in writing by the City as provided for in this Agreement.
- (c) Addresses for notice for the parties hereto shall be as set forth below. Either party may change its address for notice by providing the other party with written notice of the change sent postage prepaid by certified or registered mail, with return receipt requested. The person designated below for each party shall also be the designated contact person to assist in matters related to this Agreement.

Carma: Carma Easton, Inc.

Attn: Logan Kimble
11501 Alterra Parkway, Suite 100
Austin, Texas 78758
Telephone: (512) 498-3207
Telecopy: (512) 391-3767

With a copy to: Richard Suttle
Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Telephone: (512) 435-2300
Telecopy: (512) 435-2360

City: City of Austin
P.O. Box 1088
Austin, TX 78767
Attn: City Manager
Telephone: (512) 974-2200
Telecopy: (512) 974-2833

With a copy to: Department Director
Neighborhood Housing and Community Development
1000 East 11th Street
Austin Texas 78702
Telephone: (512) 974-3100
Telecopy: (512) 974-3161

Any notice required or permitted to be given under this Agreement will be deemed received 3 (three) days after it is posted in the U.S. mail, when correctly addressed to the recipient at its address for notice, and sent registered or certified mail, return receipt requested. Notice sent by any other method will be deemed received when and if actually received; except that notice sent by facsimile or telecopy will be deemed received upon the sender's receipt of electronic confirmation of delivery to the facsimile or telecopy number indicated above.

- (d) This Agreement constitutes the entire agreement of the parties hereto as to the subject matter hereof, and supersedes any prior or contemporaneous agreements, whether written or oral. This Agreement may be amended only if the amendment is reduced to writing, signed by Carma's and the City, and the amendment is authorized by the City Council of the City of Austin.
- (e) Venue for any dispute arising in connection with this Agreement lies in Travis County, Texas.
- (f) This Agreement is executed in multiple originals and all counterparts, when taken together, shall constitute one and the same instrument.
- (g) Carma may assign this Agreement only with the prior written consent of the Director of NHCD.
- (h) Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect shall be confined to the clause, sentence, provision, paragraph, or article held to be invalid, illegal, or ineffective.
- (i) The terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and assigns, and where the terms "Carma" or "the City" are used in this Agreement, they mean and include their permitted respective successors and assigns. If either Party assigns its interest as permitted by the other Party, the assigning party will not be released from its obligations under this Agreement, except to the extent it obtains a written release from the other party, which such party may give or withhold in its sole discretion.
- (j) Either party may terminate this Agreement but only for a material breach which has not been cured after the applicable cure period has passed.
- (k) This Agreement takes effect upon the last date of execution of the Agreement by the City and Carma and will be effective until Carma has met all of its obligations under this Agreement unless terminated earlier by the Parties.
- (l) Carma shall provide in one centralized location complete and accurate books and records of all final documentation such as (by way of example only): final executed agreements and contracts with builders related to Carma's performance of this Agreement; appraisals; and correspondence with NHCD, the City, and builders. The City shall have access to inspect and audit such books and records at all reasonable times upon reasonable prior notice to Carma and may make copies of those books and records. Carma shall require all builders to which it conveys Affordable Lots to comply with this subsection.

Further, Carma shall maintain records as required by this Agreement, track its compliance with this ownership affordability requirement, and report that compliance in writing to NHCD bi-annually. Carma further agrees that NHCD has the right on an annual basis to audit Carma, with a nationally or regionally acceptable accounting firm acceptable to the City, to verify the information reported to NHCD and to obtain and make copies of any

information necessary to carry out the audit. The audit will be done upon reasonable prior notice to Carma and at all reasonable times. Still further, Carma agrees to fully cooperate with the City and the auditor in such an audit and to provide the information requested by the City or the auditor in a timely manner. Carma further agrees that the final audit report will be delivered to both Carma and the City after completion of the audit.

- (m) If the City or Carma is delayed, hindered, or prevented from performance of any of its respective obligations under this Agreement by reason of Force Majeure, and if such Party is not in default of this Agreement, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following two requirements are complied with by the affected party. First, the affected party shall give prompt written notice of such occurrence to the other party. Second, the affected party shall diligently attempt to remove, resolve, or otherwise eliminate such event, keep the other party advised with respect to this progress, and commence performance of its affected obligations immediately upon such removal, resolution, or elimination.
- (n) This Agreement runs with the land and shall be binding on Carma and its successors and assigns with respect to the Property as that Property is described in Section III of this Agreement. Carma acknowledges and agrees that City will file this Agreement in the Travis County Official Public Records.
- (o) This Agreement creates no vested rights under Texas Local Government Code Chapter 245.
- (p) Each party acknowledges and agrees that it has not received and is not relying upon tax or other advice from the other party and that it has and will continue to consult its own advisors. The City makes no representation or warranty whatsoever regarding the tax treatment to Carma of this Agreement.
- (q) This Agreement will survive the dissolution of the MUD's and will remain in effect through the development and buildout of the entire PUD and until all requirements of this Agreement have been met by Carma.
- (r) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- (s) No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall be in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.
- (t) This Agreement has been reviewed and revised by legal counsel for both Carma and the City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

- (u) No member, official, or employee of the City shall be personally liable to Carma in the event of a default or breach by the City or for any amount which may become due to Carma, or on any obligation under the terms of this Agreement.
- (v) Nothing in this Agreement shall be construed as creating or constituting any partnership, joint venture, employment, or agency between the parties.
- (w) No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall be in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.
- (x) In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered by the parties, the City and Carma agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at such time or times as may be necessary or appropriate any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated hereby.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

EXECUTED to be effective as of the ____ day of _____, 2____.

Corporation:

By: _____

Austin, Texas _____

By: _____
a _____ Corporation

By: _____

Printed Name: _____
on behalf of Corporation

Title: _____

THE CITY OF AUSTIN

By: _____

Printed Name: _____

Title: _____

ACKNOWLEDGEMENTS

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of _____, 2____ by _____, the (title) of Corporation, Inc., a _____ Corporation, on behalf of said _____ Corporation.

(SEAL)

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of _____, 2____ by _____, _____ (title) of the City of Austin, a Texas home rule municipal corporation, on behalf of said municipal corporation.

(SEAL)

Notary Public, State of Texas

DRAFT

EXHIBIT A

Metes and Bounds description of the Pilot Knob Property

DRAFT

EXHIBIT B

OPTION AGREEMENT

WHEREAS, this Option Agreement (“Agreement”) is made and entered into this ____ day of 20__, by and between the Carma (“Carma”) and the City of Austin (“the City”), collectively referred to as “the Parties”; and

WHEREAS, Carma is the fee simple owner of a certain platted lot (“the lot”) situated in Travis County, Texas, and the lot is more particularly described as follows: (insert legal description or lot and block information); and

WHEREAS, the City desires to procure an option to purchase the lot under the terms and conditions stated in this Agreement; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency is hereby acknowledged by the Parties, Carma and the City agree as follows:

DEFINITIONS

Closing Date shall mean the last day of the closing term or such other date during the closing term selected by the City.

Execution Date shall mean the day upon which the last party to this Agreement executes this Agreement.

Option Fee shall mean the total sum of \$100.00 paid by the City to Carma;

Option Term shall mean the period of time beginning on the Execution Date and expiring upon the earlier of 1) three years after the date that Carma provides written notice to the City and NHCD that it has conveyed title to an Affordable Lot to a builder; 2) the date when the City notifies Carma (or builder, if applicable) that it will not exercise the option; or 3) the date when a homebuyer meeting the eligibility requirements of the Pilot Knob Affordable Housing Agreement and the CLT buys and closes on an Affordable Ownership Unit located on an Affordable Lot.

Option Exercise Date shall mean the date, within the Option Term, upon which the City sends its written notice to Carma exercising its Option to Purchase the lot.

Pilot Knob Affordable Housing Agreement shall mean the agreement entered into between the parties, that documents exactly how Carma will comply with certain affordable housing requirements, and that is on file in the Official Public Records of Travis County, Texas in Record No. _____.

GRANT OF OPTION

For and in consideration of the Option Fee paid by the City to Carma as set forth in this Agreement, Carma does hereby grant to the City the exclusive right and Option (“Option”) to purchase the lot upon the terms and conditions as set forth in this Agreement.

PAYMENT OF OPTION FEE

The City agrees to pay Carma the Option Fee upon the Execution Date.

EXERCISE OF OPTION

The City may exercise its exclusive right to purchase the lot pursuant to the Option, at any time during the Option Term, by giving written notice to Carma. As stated above, the date of sending the notice is the Option Exercise Date. In the event the City does not exercise its exclusive right to purchase the lot granted by the Option during the Option Term, Carma shall be entitled to retain the Option Fee, and this Agreement shall become absolutely null and void and neither party shall have any other liability, obligation, or duty under or pursuant to this Agreement.

CONTRACT FOR PURCHASE AND SALE OF THE LOT

In the event the City exercises its exclusive Option as provided for in the preceding paragraph, Carma agrees to sell and the City agrees to pay for the lot, and Carma shall convey title to the lot to Austin Housing Finance Corporation. Further, both parties agree to execute a contract for the purchase and sale of the lot in accordance with the following terms and conditions:

- (a) The purchase price is the appraised value of the lot discounted by 20% (twenty percent) of the appraised value, based on an appraisal performed by an independent third-party appraiser selected by the City. The appraisal must be dated no later than 60 (sixty) days following the date the City notifies Carma that it will exercise its Option to purchase the lot.
- (b) The closing date shall be on _____, 20__ or on any other date that is authorized by, and consistent with the Pilot Knob Affordable Housing Agreement.
- (c) Carma’s and the City’s costs of closing the Agreement shall be borne by City and shall be paid at the time of closing on the lot.
- (d) In the event the City, after it exercises its Option, fails to proceed with the closing of the purchase of the lot pursuant to the terms and conditions as contained in this Agreement and/or under the Contract, Carma shall be entitled to retain the Option Fee as liquidated damages and shall have no further recourse against the City.

- (e) In the event Carma fails to close the sale of the lot pursuant to the terms and conditions of this Agreement and/or under the Contract, the City shall be entitled to: (i) sue for specific performance of the real estate purchase and sale contract, (ii) terminate such Contract and sue for money damages or any other relief, at law or in equity, to which the City believes it may be entitled, and (iii) pursue any other relief it is entitled to under the Pilot Knob Affordable Housing Agreement.

MISCELLANEOUS

- (a) This Agreement shall become effective and binding only when fully executed by both Carma and the City.
- (b) Addresses for notice for the parties hereto shall be as set forth below. Either party may change its address for notice by providing the other party with written notice of the change sent postage prepaid by certified or registered mail, with return receipt requested. The person designated below for each party shall also be the designated contact person to assist in matters related to this Agreement.

Carma: Carma Easton, Inc.
Attn: Logan Kimble
11501 Alterra Parkway, Suite 100
Austin, Texas 78758
Telephone: (512) 498-3207
Telecopy: (512) 391-3767

With a Copy to: Richard Suttle
Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Telephone: (512) 435-2300
Telecopy: (512) 435-2360

City: City of Austin
P.O. Box 1088
Austin, TX 78767
Attn: City Manager
Telephone: (512) 974-2200
Telecopy: (512) 974-2833

With a copy to: Director,
Neighborhood Housing and Community Development Department
1000 East 11th Street
Austin Texas 78702
Telephone: (512) 974-3100
Telecopy: (512) 974-3161

Any notice required or permitted to be given under this Agreement will be deemed received 3 (three) days after it is posted in the U.S. mail, when correctly addressed to the recipient at its address for notice, and sent registered or certified mail, return receipt requested. Notice sent by any other method will be deemed received when and if actually received; except that notice sent by facsimile or telecopy will be deemed received upon the sender's receipt of electronic confirmation of delivery to the facsimile or telecopy number indicated above.

- (c) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- (d) This Agreement shall apply to, inure to the benefit of, and be binding upon and enforceable against the parties and their respective heirs, successors, and assigns.
- (e) Time is of the essence of this Agreement.
- (f) Any cost and/or fees incurred by the City or Carma in executing this Agreement shall be borne by the respective party incurring the cost and/or the fee.
- (g) This Agreement contains all of the terms, promises, covenants, conditions, and representations made or entered into by or between Carma and the City and supersedes all prior discussions and agreements whether written or oral between Carma and the City with respect to the Option and all other matters contained in this agreement constitute the sole and entire agreement between Carma and the City.
- (h) This Agreement may not be amended or modified unless the amendment is reduced to writing, executed by both the City and Carma, and authorized by both Carma and the City Council of the City of Austin.

IN WITNESS WHEREOF, THE PARTIES have executed this agreement under proper authority:

Carma Easton, LLC

City of Austin, Texas