

February 14, 2024

WHEREAS, on June 25, 2008, the City Council authorized the City Manager to execute a loan agreement (Agreement) and related documents with Texas Heavenly Homes, Ltd. (THH) for a loan in the amount of \$500,000.00 at 0% interest for the purposes of acquiring improved and unimproved properties (Properties) in the Bottom neighborhood (the Bottom), and for associated relocation, environmental remediation or demolition by Resolution No. 08-1800. The terms of the loan required THH to develop and sell or lease housing units on all of the Properties acquired with the loan funds to households earning 140% or less of area median income (AMI); and

WHEREAS, the Agreement was entered into pursuant to the City's Chapter 380 Program for Loans and Grants and the Public/Private Partnership Program, which, at the time, included a special category for an Economic Development General Obligation Bond Program for Southern Dallas. The funding source for the loan was 2006 General Obligation bond monies that were allocated to promoting economic development in the Southern area of the City. On January 8, 2009, the City of Dallas executed the loan agreement with THH; and

WHEREAS, by 2012 THH acquired 36 residential lots in the Bottom neighborhood and expended all loan proceeds but had not begun developing said housing units; and

WHEREAS, THH's failure to develop housing units was attributed to a combination of several factors, including: (1) the lack of upgraded public water and sewer infrastructure, (2) the small lot size of many of the Properties, (3) the costs and regulations related to developing in the floodplain, and (4) THH's desire to deviate from certain components of the Bottom Urban Structure and Guidelines; and

WHEREAS, on May 22, 2019, the City Council authorized a construction contract for the construction of street paving, drainage, and water and wastewater main improvements for the Bottom Phase I Project which consists of: North Denley Drive from Hutchins Avenue to levee; North Moore Street from Hutchins Avenue to levee; and May Hall Street from North Denley Drive to Moore Street by Resolution No. 19-0757; and

WHEREAS, on May 9, 2018, the City Council authorized the adoption of the Comprehensive Housing Policy (CHP) by Resolution No. 18-0704; and

WHEREAS, after the adoption of the CHP, the City Council authorized multiple amendments to the CHP by on November 28, 2018 by Resolution No. 18-1680; on May 22, 2019 by Resolution No. 19-0824; on March 27, 2019 by Resolution No. 19-0429 and Ordinance No. 31142; on June 12, 2019 by Resolution No. 19-0884; on June 26, 2019 by Resolution No. 19-1041; on September 25, 2019 by Resolution No. 19-1498; on December 11, 2019 by Resolution No. 19-1864; on September 9, 2021 by Resolution No. 21-1450; on January 22, 2020 by Resolution No. 20-0188; on August 26, 2020 by Resolution No. 20-1220; on January 27, 2021 by Resolution No. 21-0212; on September 9, 2021 by Resolution No. 21-1450; on October 13, 2021 by Resolution No. 21-1655; on October 13, 2021 by Resolution No. 21-1656; on May 11, 2022 by Resolution No. 22-0744; and on September 28, 2022 by Resolution No. 22-1432; and

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WHEREAS, on June 12, 2019, the City Council authorized the City Manager to execute an amendment to the loan agreement with Texas Heavenly Homes, Ltd. for the acquisition and development of single-family homes in the Bottom neighborhood, previously approved by Resolution No. 08-1800 on June 25, 2008, to: (1) extend the completion date from January 9, 2016 to: (a) within two years of completion of Phase I of the public infrastructure improvement project for the 10 parcels of real property located in Phase I of the public infrastructure improvement project; and (b) within two years of completion of Phase II of the public infrastructure improvement project for the 19 parcels of real property located in Phase II of the public infrastructure improvement project; (2) require house elevations and plans to conform with the Bottom Urban Structure and Guidelines and the Urban Design Expectations; (3) require the constructed homes to be sold to households earning 80 percent of area median income and below; (4) impose a five-year period of affordability wherein the home must remain occupied by an eligible household; (5) include performance thresholds and requirements; and (6) convert the loan agreement to a conditional grant agreement; and

WHEREAS, on December 14, 2022, following a public hearing, the City Council approved the final adoption of the 2022 Community Development Block Grant Disaster Recovery (CDBG-DR) Budget and draft Action Plan to accept CDBG-DR Funds from the U.S. Department of Housing and Urban Development which included New Construction – Multi-Unit funds by Resolution No. 22-1836; and

WHEREAS, Community Development Block Grant Disaster Recovery (CDBG-DR) Funds must be spent for necessary activities related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the “most impacted and distressed (MID)” areas of qualifying disasters and includes all of Dallas; and

WHEREAS, new construction of affordable housing is an eligible activity under United States Department of Housing and Urban Development (HUD)’s CDBG-DR policy as it clearly addresses a direct or indirect impact of the February 2021 winter and ice storm that resulted in damaged or destroyed available affordable housing stock in Dallas, TX; and

WHEREAS, on May 15, 2023, due to continued increased environmental and construction costs, the Applicant submitted a subsequent proposal under the City’s Notice of Funding Availability (NOFA), as amended, to receive additional funds to fill this most recent funding gap, in the amount of \$3,084,427.00; and

WHEREAS, to conform with The Bottom Urban Design Guidelines the City of Dallas Department of Housing & Neighborhood Revitalization will waive DHP33 requirements of “homes constructed using City of Dallas funding must have three bedrooms, at least 1.5 bathrooms, and a minimum square footage of 1,200.00”; and

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WHEREAS, to assist in the affordable housing production goals established in the CHP, as restated in the Dallas Housing Resource Catalog, the City desires to enter into a development loan agreement with the Applicant and/or its affiliates in an amount not to exceed \$500,000.00 in Bond funds, and a development loan agreement in an amount not to exceed \$3,084,427.00 in Community Development Block Grant Disaster Recovery (CDBG-DR) funds for a total of \$3,584,427.00 for the development of the Bottom Infill Project.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Manager, is hereby authorized to increase in the development loan agreement with Texas Heavenly Homes, Ltd. (Applicant), approved as to form by the City Attorney, for the development of the Bottoms Infill (Project), a 32-unit single-family affordable housing project located in the Bottoms neighborhood of Council District 4 in an amount not to exceed \$3,084,427.00 from Community Development Block Grant Disaster Recovery Funds (CDBG-DR).

SECTION 2. That the City Manager is hereby authorized to execute a development loan with Applicant, approved as to form by the City Attorney, described herein including any financing and associated documents related to the loan agreement, subordinations to financial institution lien(s), and release of liens and termination of deed restrictions on the property upon satisfaction of all applicable conditions, approved as to form by the City Attorney. The Director of the Department of Housing & Neighborhood Revitalization (Director) may extend deadlines by up to two years.

SECTION 3. That the City Manager is hereby authorized to increase the development loan for THH, from \$500,000.00 in HOME Funds to include \$3,084,427.00 in CDBG-DR.

SECTION 4. That CDBG-DR Funds will be used for site development and vertical construction costs such as framing, roofing, carpentry, and other eligible costs, as allowed by federal regulations governing the use of the funds. All funds will be provided on a reimbursable basis.

That the terms of the loan agreement shall include, conditioned upon the following terms:

- A. The Developer shall submit a development plan and the development plan must be approved by the City;
- B. Upon transfer of ownership of each Land Transfer lot from the City to the Developer, Developer must maintain all vacant lots in compliance with all applicable city, state and federal regulations including maintaining the lots free of high weeds and litter;

SECTION 4. (continued)

- C. No liens shall exist on the lots, except for liens related to the development of each lot, as detailed herein. However, Developer shall ensure that each lot is free from liens or other encumbrances at the time of sale to each income-eligible homebuyer;
- D. Developer shall ensure that all single-family homes (Units) have access to public sewer, public water, public road, and any other necessary utilities;
- E. All Project costs must be reasonable and customary and conform with the CHP, and any other applicable City regulations;
- F. City funding must be used for eligible project costs and cannot be used for land acquisition through the Land Transfer Program;
- G. All hard costs associated with the Project should be certified and result from a competitive bidding process;
- H. In general, all CDBG-DR-assisted units shall have an affordability period congruent with HOME regulations based on the amount of HOME subsidy invested in the unit (Five years for \$15,000.00, 10 years for \$15,000.00-\$40,000.00, and 15 years if over \$40,000.00). Developer shall be responsible for informing the buyer and ensuring that the appropriate affordability term is included in their sales contract. The affordability period shall be enforced by restrictive covenants filed against each property. Additionally, Developer shall only sell to homebuyers who meet the eligibility criteria set forth in the City of Dallas Homebuyer Assistance Program, or a successor program;
- I. To conform with The Bottom Urban Design Guidelines the City of Dallas Department of Housing & Neighborhood Revitalization has agreed to waive DHP33 requirements of “homes constructed using City of Dallas funding must have 3 bedrooms, at least 1.5 bathrooms and a minimum square footage of 1,200”;
- J. The Project will consist of up to 32 new construction single-family homes, all of which will be built on Land Transfer lots. The Project will include 32 CDBG-DR-assisted units. All homes are to be sold to households at 60-80% of the AMI. Each home will range from 1,015 square feet to 1,772 square feet of living space. The sales price of each CDBG-DR-assisted Unit shall comply with the requirements outlined in the CHP and the Community Development Block Grant (CDBG) regulations. All units will remain affordable for a minimum of five years. Affordability periods for CDBG-DR-assisted units will conform to CDBG rules based on the amount of subsidy included in the unit;
- K. Units constructed shall meet industry-recognized standards in which Developer must certify standards were met under one of the following programs: Energy STAR, Enterprise Green Communities, Leadership in Energy and Environmental Design, ICC-700 National Green Building Standards or U.S. Environmental Protection Agency Indoor AirPlus;

SECTION 4. (continued)

- L. Units shall be equipped with the following Energy Star-rated appliances in conformity with the development standards outlined in the CHP: refrigerator, range/oven, dishwasher, and garbage disposal;
- M. Units shall meet applicable Section 504 Rehabilitation Act and Uniform Federal Accessibility Standards requirements. If Units are presold, Developer must make the unit accessible upon the request of the prospective buyer;
- N. Upon completion of construction of each Unit or prior to construction, Developer shall present a marketing plan to the City of Dallas identifying the steps it is taking to market the homes to income-eligible renters or homebuyers;
- O. The City Manager may authorize minor modifications to the Project to reduce the amount of lots sold to Developer and to modify the sales price, so long as such modification complies with the CHP;
- P. Developer shall construct and rent or sell each Unit to eligible homebuyers within two years from the date of sale of the lot by the City to Developer. Developer may receive one one-year extension of the loan agreement if delays are related to installation or improvement of infrastructure or zoning/platting issues. However, each CDBG-DR funded Unit must be sold within nine months of completion of construction or the Units must be converted to rental housing or the project will be deemed ineligible and all CDBG-DR Funds paid to Developer for such unit(s) must be repaid to the City.
- Q. Developer shall obtain a building permit for at least one Unit within 30 days from the date of sale to Developer from City;
- R. Developer shall comply with Chapter 20A of the Dallas City Code including, but not limited to, Developer shall not discriminate against holders of any housing vouchers, including vouchers directly or indirectly funded by the federal government;
- S. The loan shall be secured by a first or second lien on all lots sold to Developer and a note. The lien shall be subordinate only to a private financial institution's superior lien for a loan in a greater amount. The lien will be released upon satisfaction of the obligations detailed herein and in the contract; and
- T. Developer shall adhere to the requirements of the CHP, including but not limited to the Land Transfer Program, the New Construction and Substantial Rehabilitation Program and the Appendix 1 - Single Family Development, authorized by Resolution No. 19-1498.

SECTION 4. (continued)

The CDBG-DR loan is repayable subject to the following terms:

- A. The term of the loan shall be 40 years beginning from the effective date and ends on the maturity date. The maturity date and the repayment schedule shall be defined/detailed in the loan agreement and other financing documents for the loan, in accordance with the DHP33 and DHRC;
- B. Applicant shall complete construction of the 168 units within two years of the effective date, which may be extended by the Director for up to two years (unless prohibited by the applicable regulations);
- C. The unit mix will include 67 1-bedroom apartments, 84 two-bedroom apartments, and 17 three-bedroom apartments. The requirements of this subsection may be modified by the Director where permitted by the applicable American Rescue Plan Act or CDBG-DR regulations;
- D. Loan amortization is 40 years, with an interest rate of one percent simple annual interest;
- E. Applicant must execute a promissory note(s) for the total loan amount;
- F. The owner of the property shall execute and record deed restrictions on the property. The promissory note and deed restrictions may be subordinate to deed restrictions issued by TDHCA, HUD and/or to other financing (without waiving compliance with such deed restrictions) provided that the City's deed restrictions or regulatory agreement, as applicable, have priority over any monetary liens, and shall be recorded to secure the 30-year affordability period for the affordable CDBG-DR and ARPA-funded units and the 15-year voucher period for the requirement to make best efforts to lease up to 10 percent of the units to holders of housing vouchers pursuant to Chapter 20A of the Dallas City Code and the DHP33 and DHRC;
- G. The owner of the property, shall execute and record a deed of trust on the property, including the leasehold and all improvements to secure payment and performance which will be released once all terms and conditions of the CDBG-DR and ARPA loan agreement(s) are met;
- H. The City's lien for the loan agreement may be subordinate to a financial institution's lien provided that: i) the City's deed restrictions or regulatory agreement, as applicable, have priority over any monetary liens and ii) any such subordination is in compliance with the requirements of the DHP33 and DHRC. In the event subordination agreements are required, the City agrees to provide the subordination agreement in a form acceptable to the City;
- I. Applicant shall provide guarantees including a completion and operating deficit guaranty for the loan agreement;
- J. Applicant must provide payment and performance bonds or guarantees, or acceptable equivalent methods of guarantees to the City in the total amount of the construction of the development;

SECTION 4. (continued)

- K. Repayment of loan principal and interest shall be an annual surplus cash payment. The City's surplus cash loan funding will be structured with note provisions requiring that at least 50 percent of Eligible Cash, as defined in the DHP33 and DHRC, in excess of \$50,000.00 be paid annually to subordinate lenders (including funding partners and related parties) on a prorated basis;
- L. A default under the ARPA loan agreement shall constitute a default under the CDBG-DR loan agreement, and vice versa;
- M. The CDBG-DR and ARPA loans shall be a nonrecourse loan and the City's remedy is limited to foreclosure only, in the event of an uncured default; and
- N. Although the term, the maturity date, and the amortization are anticipated to be for a period of 40 years, the Director may adjust the period of years, subject to the applicable federal regulations, DHP33 and DHRC, so that it is of such length as required by the senior lender but not longer than 12 months after the term of the senior loan.

SECTION 5. That the CDBG-DR loan agreement is conditioned upon:

- A. Approval of equity, construction, and permanent financing documentation in a form acceptable to the City; and
- B. HUD federal requirements including environmental review, site and neighborhood standards, cost reasonableness, subsidy layering, and;
- C. Applicant shall make a good faith effort to comply with the City's Business Inclusion and Development goal of 32 percent participation by certified Minority/Women-owned Business Enterprises for all hard construction expenditures of the Development (i.e., public and private improvements) and meet all reporting requirements of the City of Dallas, Small Business Center Department; and
- D. All conditions listed in the CHP for applicable developer programs; and
- E. Closing on equity and all other financing for the development.

SECTION 6. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$3,084,427.00 to Texas Heavenly Homes, Ltd. or its affiliate from CDBG-Disaster Recovery Fund, Fund CCD1, Department HOU, Unit 946G, Object 3015, Encumbrance/Contract No. HOU-2019-00010650, Vendor VS0000032789 as the City receives and reviews reimbursement requests and related supporting documentation submitted by THH for eligible expenditures and accepts supporting evidence as defined in the agreements.

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SECTION 7. That the Chief Financial Officer is hereby authorized to record notes receivable - developers loan in Balance Sheet Account 033F and deferred revenue in Balance Sheet Account 050A for the amount of the loan in Section 6.

SECTION 8. That the Chief Financial Officer is hereby authorized upon receipt of payment on the notes receivable to record principal payment revenue in CDBG-DR Program Income Fund, Fund HUPI, Department HOU, Unit 994G, Revenue Code 8520 and interest payment revenue in CDBG Program Income Fund, Fund HUPI, Department HOU, Unit 6317, Revenue Code 8521.

SECTION 9. That this resolution does not constitute a binding agreement upon the City or subject the City to any liability or obligation until such time as the loan documents are duly approved by all parties and executed.

SECTION 10. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.