

Prepared by and return after recording to:

Brian L. Crawford  
Robert M. Jessup Jr.  
Sanford Holshouser LLP  
209 Lloyd St., Suite 350  
Carrboro, NC 27510

**PINs – 9870912947**

**Brief description – 2200 Homestead Road, Chapel Hill**

## **Agreement for 2200 Homestead Road Site Development**

**THIS AGREEMENT** is dated as of \_\_\_\_\_, 2021, and is between the Town of Chapel Hill, a North Carolina municipal corporation (the “Town”), and Self-Help Ventures Fund (“SHVF”), a North Carolina nonprofit corporation.

### ***Introduction and Purpose***

The Town owns a parcel of approximately 14 acres at 2200 Homestead Road, Chapel Hill, as more specifically described in Attachment A (the “Site”). In September 2017, the Town dedicated the Site for mixed-income affordable housing, with a focus on providing affordable homes, and requested staff to pursue development. In 2019, the Town accepted a proposal from SHVF, as part of the development team they assembled and refer to as the Homestead Housing Collaborative, to develop the Site as a residential community serving a range of incomes and providing a variety of housing types for homeownership and rental.

This Agreement states the Parties’ definitive and binding agreement with respect to SHVF’s role in the undertaking to manage Site construction on behalf of the Town.

*Unless the context clearly requires otherwise, capitalized terms used in this Agreement and not otherwise defined have the meanings set forth in Attachment B.*

**NOW, THEREFORE,** for and in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

**1. The Town will convey the Site to SHVF.**

**A. Conveyance and acceptance.** The Town will convey the Site to SHVF, for valuable consideration the receipt of which is hereby acknowledged, and SHVF agrees to accept the conveyance under the terms and conditions of this Agreement. The Town is making this conveyance under its statutory authority North Carolina General Statute 160A-279 to convey property to nonprofit organizations carrying out a public purpose and its authority to enter into agreements with private entities to provide housing for persons of low and moderate income.

**B. Termination prior to Closing.** The Town will have no further obligation to convey the Site if the Town has not approved the Site Development Contract by July 1, 2022, with time being of the essence for this purpose. SHVF can terminate this Agreement at any time before the Closing Date for any reason. If under this Section either this Agreement expires or SHVF terminates this Agreement, then neither Party will have any further rights or obligations under this Agreement.

**C. Closing; Special Warranty Deed.** The Town will convey the Site to SHVF by a special warranty deed in form and substance acceptable to both Parties (the "Deed"). The Town will deliver the Deed to SHVF at such time and place within Orange or Durham Counties, North Carolina as SHVF may designate, but SHVF must give the Town five Business Days' notice of the time and place for delivery. In no event will the Town be required to deliver the Deed less than 30 days after the Town's approval of the Site Development Contract. The delivery and acceptance of the Deed are referred to in this Agreement as the "Closing," and the date and time of acceptance are referred to as the "Closing Date."

**D. Conditions for closing.** The Town must receive the following items, in form and substance reasonably acceptable to the Town, at or prior to the Closing, as conditions to the Town's obligation to complete the Closing.

1. The Site Development Contract in a form previously approved by the Town, signed by both SHVF and the Site Contractor.
2. The payment and performance bonds called for in Section 2A.2 d.
3. The final Budget referenced in Section 2B.2.
4. The executed Funding Agreement referenced in Section 2B.
5. An agreement by SHVF to reconvey the Site to the Town for no additional consideration at either Party's request (A) within 60 days after the Completion Date or (B) any time on or after the date which is twelve (12) months after the issuance of building permits for the Site Development Contract Work (the "Deadline") if the Completion Date has not previously occurred. The Parties agree that time is of the essence with respect to the dates and timelines specified in this subsection. This agreement to reconvey may be included in the Deed or in a separate agreement as the Parties may agree.
6. The recording of any land use restrictions or covenants related to the overall Site development plan that the Town deems desirable to be in place prior to Closing. These restrictions or covenants will be designed to provide for long-term use of the Site for affordable housing without regard to any specific requirements or obligations of the Collaborative Developers.

**E. Delivery of information.** Within ten Business Days after the Effective Date, the Town will deliver to SHVF at the address set forth in Section 6(a) (or make available for SHVF's convenient examination and copying) copies of all the following materials relating to the Site in the Town's possession:

1. Any policies of title insurance issued in favor of the Town or the Town's predecessors in title for any portion of the Site.

2. Any land surveys of any portion of the Site.
3. Any permits, zoning stipulations, agreements, or requirements that affect or that are proposed to affect any portion of the Site.

In addition, the Town will provide to SHVF any information or materials relating to the Site of the same or similar nature to the foregoing coming into the Town's possession or control throughout the term of this Agreement. The Town represents that all such deliveries are being made in good faith, but the Town makes no further representation or warranty, expressed or implied, as to the accuracy or completeness of those documents.

**F. Risk of loss.** The Town will bear the risk of loss or damage to the Site until the Closing, except as otherwise provided for in this Agreement.

**G. No brokers.** The Town and SHVF represent, one to the other, that it has not dealt with any broker, finder, or other agent in connection with the transaction contemplated by this Agreement. To the extent permitted by law, each party will indemnify, defend, protect, and hold the other harmless from and against any and all claims incurred by the other party by reason of any breach or inaccuracy of the representation contained in this Section.

**H. Closing costs.** The Town will pay for the preparation of the Deed, and for all other documents necessary to perform the Town's obligations under this Agreement. SHVF will pay for any title insurance, recording fees for the Deed and any other recordable documents described by this Agreement. Each party is responsible for its own legal fees and costs. As the Site is currently exempt from real estate taxes, there will be no pro-ration payment for real estate taxes.

**I. Post-closing obligations.** After Closing, the Town and SHVF will cooperate with one another, at reasonable times and on reasonable conditions, to prepare, execute and deliver documents necessary to fully carry out the intent and purposes of this Agreement. Except for such instruments as the Parties were originally obligated to deliver by the terms of this Agreement, such cooperation will be without additional cost or liability to the Party from which such cooperation is sought.

## **2. SHVF will develop the Site on behalf of the Town for the purpose of passing it to other Collaborative Developers**

### **A. Site development contract**

SHVF will plan, design, build and otherwise carry out the Project. SHVF will act in consultation with the Town and under the terms and conditions of this Agreement, but SHVF has the right and responsibility to manage the Project. SHVF's responsibilities will include the following:

1. SHVF has selected, and the Town hereby approves, WeaverCooke to be the site contractor (the "Site Contractor").
2. SHVF will provide for the preparation of the Site Development Contract, and then will enter into the Site Development Contract with the Site Contractor. The Site Development Contract will be subject to the Town's reasonable approval, but the Site Development Contract must in any event include the following terms and conditions:
  - a. For the Site Development Contract to be a guaranteed maximum price contract and may allow for change orders to the scope of work.
  - b. For the scope of work for Site Development to be consistent with the Zoning Compliance Permit issued by the Town. The scope for preparing the new site for relocation of Hope Gardens includes: mobilization, erosion control, clearing and grubbing, grading, fine grading, driveway apron, and laying gravel in the parking lot for up to six regular parking spaces (the "Hope Gardens Work"). Notwithstanding the foregoing, the Parties acknowledge and agree that SHVF shall have no obligation to include the Hope Gardens Work in the Site Development Contract if (a) the cost of such work exceeds \$95,000; or (b) the final Budget does not include sufficient resources for completing such work.

- c. For the Project to be complete not later than the Deadline. SHVF shall notify Town as far in advance as is possible of any anticipated delays beyond the Deadline.
- d. For the Site Contractor to provide payment and performance bonds in favor of the Town as would apply if the Town were contracting for work on a public contract covered by Chapter 143 of the North Carolina General Statutes.
- e. For the Site Contractor to proceed in a good and workmanlike manner, and to keep the Project free of defects and the Site free of mechanics', materialmen's, and similar liens.
- f. For the Site Contractor to maintain general liability, workers compensation, builders' risk and other insurance as the Town may reasonably require, and for those coverages to be subject to such terms and conditions, and extensions of coverage to the Town, as the Town may reasonably specify.
- g. For contractors' warranties to be assigned to the Town upon the completion of the Site Contractor's work.

4. SHVF will on its own apply and obtain all permits, entitlements and planning approvals required according to municipal and county ordinances. SHVF will present to the Town the finished contractor documents when the Project is complete. SHVF will at all times carry and maintain, or cause the Contractor to carry and maintain, with responsible carriers general liability insurance in amounts reasonably acceptable to the Town from time to time, with the Town as an additional insured with respect to occurrences at the Site. SHVF will promptly notify the Town of the Completion Date.

**B. Project Budget; Change Orders.**

1. The Town and SHVF will agree on a Project budget (the "Budget"). The Budget will show in reasonable detail (a) all primary categories of Project Costs, except that all amounts to be paid under the Site Development Contract may be shown

as a single entry, and (b) all sources of Project funding. Either Party may request additional information concerning items of funding or expense.

2. Attachment D shows a tentative Budget, but the Parties are not bound by this Exhibit in completing the final Budget. SHVF acknowledges that the Town intends to contribute not more than \$3,500,000 toward Project Costs. SHVF has no obligation to fund Project Costs beyond sources identified in the Project Budget.

3. SHVF has primary responsibility to manage the Project and the Budget to secure completion of the Project within the Budget, in accordance with the agreed-upon scope of work, and by the Deadline.

4. If the Site Contractor requests a change to the Site Development Contract (a) that does not modify the original scope of such contract and (b) the cost of which does not exceed remaining contingency (a requested "Change Order"), SHVF shall either (a) deny the Change Order or (b) approve the Change Order and provide notice to the Town of the requested Change Order. If the Change Order requires an increase in Project funding, SHVF must also notify the Town of the sources of funding to be made available to resolve that increase.

5. If the Site Contractor requests a change to the Site Development Contract (a) that modifies the original scope of such contract or (b) the costs of which exceeds remaining contingency (a requested "Scope Change Order"), SHVF shall either (a) deny the Scope Change Order or (b) notify the Town of the requested Scope Change Order and SHVF's recommendation that it be approved. If the Scope Change Order requires an increase in Project funding, SHVF must also notify the Town of the sources of funding to be made available to resolve that increase. Within five Business Days of its receipt of the notice and recommendation of a Scope Change Order, the Town Manager (or the Manager's designee) must notify SHVF of either (a) the Town's approval of the Scope Change Order or (b) the Town's reasons, in brief and general terms, for not approving the Scope Change Order or for referring the Scope Change Order for consideration by the Town Council at the next Council meeting for which the agenda has not yet been distributed. If the Town fails to deliver a notice as contemplated under (b), then the Town will be deemed to have approved the Scope Change Order, except that no Scope Change Order that increases the Town Maximum Contribution will be effective without the Town's express consent.

6. The Town grants the Town Manager (or the Manager's designee) full authority to provide approval, or not, under this Section. The Town Manager, in the Manager's discretion, may refer any Scope Change Order to the Town Council for the Town Council's consideration.

7. If conditions require amendments to the Site Development Contract or the Budget, beyond approved Change Orders, the Parties shall negotiate in good faith to amend the Site Development Contract, the Town Maximum Contribution or other aspects of the Budget as possible. Either Party may invoke the provisions of Section 5D for the consideration of any required amendments.

**C. Disbursement of Town Payments.** The Town will make payments toward Project Costs pursuant to a separate Funding Agreement between the Town and SHVF. This agreement will be based on a form commonly used by the Town for similar project payments.

### **3. SHVF and the Town will work together on Development Contracts.**

SHVF and the Town expect that when the Project is complete, SHVF and the Town will provide for portions of the Site to be conveyed in separate transactions to the Collaborative Developers. The Site will be conveyed to the Town. If appropriate the Site may be conveyed directly in portions to the Collaborative Developers, as the Town and SHVF may agree as the Project nears its conclusion.

SHVF is the lead member of the Homestead Housing Collaborative and will have primary responsibility for coordination and leadership of its members. As lead member, SHVF will assist each Collaborative Developer to work with the Town to prepare and deliver a Collaborative Development Contract in form and substance reasonably acceptable to both parties. Each Collaborative Development Contract will include at least the information contemplated in Attachment C. The Parties acknowledge that land conveyance to a Collaborative Developer shall not occur until the Town's Collaborative Development Contract with such Developer is effective



and includes at least the terms set forth in Attachment C. Once the Collaborative Development Contract are executed and SHVF delivers the Site, the Collaborative Developers will be solely responsible for their vertical construction commitments made in their agreements with the Town. SHVF has no responsibility or obligation with respect to the performance by any Collaborative Developer of its respective Collaborative Development Contract.

#### **4. Representations and warranties of the Parties**

##### **A. By SHVF**

SHVF makes the following statements of fact, with the understanding and intent that the Town will rely on these statements in making its decision to enter into this Agreement:

(a) SHVF is duly organized, validly existing, and in good standing under the laws of North Carolina.

(b) SHVF has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

(c) SHVF has duly executed and delivered this Agreement. Assuming due authorization, execution and delivery of this Agreement by the Town, this Agreement constitutes a valid, legal and binding obligations of SHVF, enforceable in accordance with its terms, subject to bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and such principals of equity as a court having jurisdiction may impose.

(d) SHVF is solvent, is able to pay its ordinary debts and expenses as they become due, and is not currently the defendant in any bankruptcy, insolvency or similar proceeding under federal or state law.

(e) SHVF has not been barred from participation in any program of federal, state or local assistance for projects or undertakings of the sort contemplated by this Agreement.

(f) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in any material breach of the terms, conditions and provisions of any agreement or instrument to which SHVF is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(g) There is no litigation or other court or administrative proceeding pending or threatened against SHVF (or against any SHVF official in an official capacity) affecting SHVF's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement.

(h) SHVF hereby agrees to indemnify, protect and save the Town (including its affiliates), any Council member, member, director, officer, agent or employee thereof, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, actually incurred, arising out of, connected with, or resulting, directly or indirectly, from SHVF's acts or omissions in completion of the Project, including, without limitation, the possession, condition, construction or use of the Site or the actions of any Site Contractor or its agents, employees and contractors. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the termination of this Agreement, or any other agreement, document or instrument related to the Project to which SHVF and the Town are Parties. SHVF is not required to indemnify the Town under this paragraph for claims that arise solely from the Town's gross negligence or willful misconduct.

(i) No SHVF representation, covenant or warranty in this Agreement is false or misleading in any material respect.

(j) SHVF will promptly notify the Town of any matter that affects the accuracy of any representation and warranty under this Section, including any change in conditions or any receipt of any notice, action, or other information SHVF receives relating to any representation or warranty under this Section.

(k) SHVF will not cause or knowingly permit any action to be taken that will cause any of the foregoing representations or warranties to be untrue on or prior to

Closing, and all of SHVF's representations and warranties under this Agreement will be as of the Closing as though those representations or warranties were made then.

**B. By the Town**

The Town makes the following statements of fact, with the understanding and intent that SHVF will rely on these statements in making its decision to enter into this Agreement:

***Generally -***

(a) The Town is a duly organized and validly existing municipal corporation of the State of North Carolina. The Town will take no action that would adversely affect its existence as a municipal corporation in good standing in the State of North Carolina.

(b) The Town has all powers necessary to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.

(c) The Town has duly and validly authorized, executed and delivered this Agreement. Assuming due authorization, execution and delivery of this Agreement by SHVF, this Agreement constitutes a valid, legal and binding obligation of the Town, enforceable in accordance with its terms, subject to bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and such principles of equity as a court having jurisdiction may impose.

(d) The Town requires no further approval or consent from any governmental authority with respect to the Town's entering into or performing under this Agreement.

(e) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in any material breach of the terms, conditions and provisions of any agreement or instrument to which the Town is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(f) There is no litigation or other court or administrative proceeding pending or threatened against the Town (or against any Town official in an official capacity) affecting the Town's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement.

(g) No Town representation, covenant or warranty in this Agreement is false or misleading in any material respect.

***With respect to the Site and its title --***

1. The Town holds fee simple title to the Site, free and clear of any and all easements, covenants, conditions, or other encumbrances.

2. The Town is in sole and exclusive possession of the entire Site, and no other person or entity claims any right to possess all or any portion of the Site.

3. No options, rights of first refusal, or other agreements are in effect to purchase or to lease any interest in the Site or any part thereof.

4. The Site is currently exempt from *ad valorem* taxes and is expected to remain tax exempt provided it is developed for affordable housing as planned.

5. The Town is not a "foreign person" within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder.

6. The Town is not a person with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (the "OFAC"), of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Site and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism)

7. The Town has no knowledge of any violation of Environmental Laws (as defined below) related to the Site or the presence or release of Hazardous Materials (as defined below) on or from the Site except as previously disclosed to SHVF in the following reports:

**[List by date, title, and contractor; will include existing asbestos report]**

The term “Environmental Laws” includes without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing their implementing regulations and guidelines as of the Effective Date, and all state, regional, county, municipal, and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials. The term “Hazardous Materials” includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), asbestos and asbestos containing materials and any substance, material waste, pollutant or contaminant listed or defined as hazardous or toxic under any Environmental Law. The representations and warranties contained in this paragraph will survive Closing for so long as is permitted by applicable law.

***In addition --***

The Town will promptly notify SHVF of any matter that affects the accuracy of any representation and warranty under this Section, including any change in conditions or any receipt of any notice, action, or other information the Town receives relating to any representation or warranty under this Section.

The Town will not cause or knowingly permit any action to be taken that will cause any of the foregoing representations or warranties to be untrue on or prior to the Closing, and all of the Town’s representations and warranties under this Agreement will be true as of the Closing as though those representations or warranties were made then.

## **5. Defaults and Remedies; Dispute Resolution**

**A. Defaults.** A Party is in default under this Agreement if it fails to (i) complete the Project, (ii) make required payments, (iii) perform any other obligation under this Agreement, or if it (iii) dissolves, or is subject to a declaration of involuntary or voluntary bankruptcy, or if (v) any warranty, representation or statement in this Agreement or in any other document executed or delivered in connection herewith is found to be incorrect or misleading in any material respect on the date made.

**B. Remedies.** Whenever any Event of Default has occurred and has not been remedied within fifteen (15) days of receipt of written notice describing such default, the non-defaulting Party may take either or both of the following remedial steps:

i. At its option, cure the default by paying money or taking any other appropriate action, in which case the defaulting Party must reimburse the non-defaulting Party for all costs and expenses reasonably incurred in curing the default.

ii. Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, to enforce performance and observance of any obligation, agreement or covenant of a Party under this Agreement, and to recover legal fees and other expenses incurred in pursuing and enforcing any remedy

iii. Any amounts owed to a non-defaulting Party under this Section will bear interest payable by the defaulting Party, from the date of the non-defaulting Party's payment, at the annual rate of 4.00%, calculated based on a 360-day year consisting of twelve 30-day months.

**C. No remedy exclusive; other provisions.** No remedy conferred or reserved in this Agreement is intended to be exclusive, but the remedies are instead intended to be cumulative. No delay or omission to exercise any right or power accruing upon any default constitutes a waiver of that right or power. A waiver of any default is limited to the default so waived and does not waive any other default.

**D. Dispute resolution.** In the event of a dispute between the Parties concerning the terms or performance of this Agreement, the Parties will take the following steps prior to commencing any proceeding before a court or administrative body:

1. Exchange of positions. Any Party noting a dispute under this Agreement will notify the other Party of the nature of the dispute and the first Party's pro-

posed resolution. Within ten days after the notice date, the other Party must respond in writing as to its view of the dispute and its position on the proposed resolution.

2. Meet and confer. If the Parties are unable to reach an agreement on the dispute and upon notice from any Party, the Parties will promptly hold a meeting attended by representatives with appropriate authority to resolve the dispute. At this meeting, the Parties will attempt in good faith to negotiate a resolution of the dispute.

3. Mediation. If the dispute remains unsettled by negotiation, the Parties will engage the services of a professional mediator certified by the Dispute Resolution Commission as a Superior Court mediator and agreed upon by the Parties. The Parties will then attempt in good faith to resolve the dispute through mediation. The Town and SHVF will each pay one-half of the mediator's fees and expenses, and each Party will pay all its own legal fees and other expenses related to the mediation. Each Party must be represented at the mediation by a representative with appropriate authority to resolve the matters in dispute. Only after mediation may a Party initiate legal or administrative proceedings.

## **6. Additional Provisions**

a. Notices. (i) Any communication provided for in this Agreement must be in English and must be in writing. Under this Agreement, "writing" includes facsimile transmission and electronic mail.

(ii) For the purposes of this Agreement, any communication sent by facsimile transmission or electronic mail will be deemed to have been given on the date the communication is similarly acknowledged by the Town Manager or the director of the Town's office of Housing and Community, (in the case of the Town), or other authorized representative (in the case of SHVF). No such communication will be deemed given or effective without such an acknowledgment.

(iii) Any other communication under this Agreement will be deemed given on the delivery date shown on a United States Postal Service certified mail receipt,

or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

A) If to the Town, to the Town of Chapel Hill Manager, Re: Notice under 2021 2200 Homestead Road Agreement, 405 Martin Luther King Jr. Blvd., Chapel Hill, NC 27514

B) If to SHVF, to Self-Help Ventures Fund, Attn: Real Estate Team Leader, 301 W. Main Street, Durham NC 27701

(iv) The Town will send a copy of any notice sent to SHVF to Self-Help Ventures Fund, Attn: General Counsel, 301 W. Main Street, Durham NC 27701, but no failure or defect in this second notice affects the validity of a notice otherwise deemed given to the address shown in (iii)(B) (or any successor address designated under (iv) below).

(v) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others, but in no event is a Party required to give notice to more than one addressee for the notice to be otherwise effective under this Section.

(vi) Whenever this Agreement requires the giving of a notice, the person entitled to receive the notice may waive the notice, in writing. The giving or receipt of the notice will then not be a condition to the validity of any action taken in reliance upon the waiver.

**b. Each Party will bear its own costs.** Each Party will bear its own costs of the fees and expenses of its counsel and consultants, and of the studies or surveys required under this Agreement or that it otherwise commissions or obtains for its use under this Agreement.

**c. Limitation on liability of officers and agents.** No officer, agent or employee of the Town will be subject to any personal liability or accountability because of the execution of this Agreement, or any other documents related to the transactions contemplated by this Agreement. Those officers, agents or employees



will be deemed to execute documents in their official capacities only, and not in their individual capacities. This provision does not relieve any officer, agent or employee from the performance of any official duty provided by law.

**d. No assignment.** Neither Party may assign any of its rights or obligations under this Agreement without the express consent of the other.

**e. Amendments.** Neither this Agreement, nor any provision hereof may be changed, waived, discharged, modified or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement is sought.

**f. Further instruments.** Upon a Party's request, the other Party will execute, acknowledge and deliver any further instruments reasonably necessary or desired to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated by this Agreement.

**g. Governing law.** The Parties intend that North Carolina law will govern this Agreement and all matters of its interpretation. To the extent permitted by law, the Parties agree that any action brought with respect to this Agreement must be brought in the North Carolina General Court of Justice in Orange County, North Carolina.

**h. Time not of the essence.** The Parties agree that time is not of the essence with respect to the deadlines and other limits of this Agreement, except where expressly stated.

**i. Not a partnership.** This Agreement describes and defines an arm's-length contract between the Town and SHVF. The Town and SHVF are not partners or otherwise participants in a joint venture.

**j. Entire agreement.** This Agreement constitutes the entire agreement between the Town and SHVF with respect to its general subject matter.

**k. No third-party beneficiaries.** There are no persons or entities intended as third-party beneficiaries of this Agreement. No person or entity, including the Collaborative Developers, is intended to have any rights to enforce any rights or

obligations under this Agreement, other than the Town, SHVF and their respective successors and assigns.

**l. Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

**m. Recording allowed.** Either Party may provide for this Agreement to be recorded in the office of the Register of Deeds of Orange County, North Carolina.

**n. Execution; Effective date.** This Agreement will become effective as of the last date and time indicated on the signature page for a signature (the “Effective Date”). If the Agreement has not become effective, however, prior to                     , 2021, then any offer represented by the first Party’s signature is automatically revoked, and no Party has any further rights or obligations under this Agreement. Each Party must promptly give notice of its execution to the other Party.

***Attachments –***

- A – Site description
- B – Definitions; rules of interpretation
- C – Development Contract components
- D – Tentative Project Budget

***[The remainder of this page has been left blank intentionally.]***

**IN WITNESS WHEREOF**, the Town and SHVF have caused this Agreement to be executed and delivered by duly authorized officers.

**(SEAL)**

**ATTEST:**

**TOWN OF CHAPEL HILL,  
NORTH CAROLINA**

\_\_\_\_\_  
Sabrina Oliver  
Town Clerk

By: \_\_\_\_\_  
Maurice Jones  
Town Manager

Date and time: \_\_\_\_\_

**STATE OF NORTH CAROLINA;  
ORANGE COUNTY**

I, \_\_\_\_\_, a Notary Public of such Town and State, certify that Sabrina Oliver and Maurice Jones personally came before me this day and acknowledged that they are the Town Clerk and the Town Manager, respectively, of the Town of Chapel Hill, North Carolina, and that by authority duly given and as the act of such Town, the foregoing instrument was signed in the Town’s name by such Town Manager, sealed with its corporate seal and attested by such Town Clerk.

**WITNESS** my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2021.

**[SEAL]**

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[Agreement for 2200 Homestead Road Site Development, dated as of \_\_\_\_\_, 2021]

**IN WITNESS WHEREOF**, the Town and SHVF have caused this Agreement to be executed and delivered by duly authorized officers.

**(SEAL)**  
**ATTEST:**

**SELF-HELP VENTURES FUND**

\_\_\_\_\_

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

Printed name: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date and time: \_\_\_\_\_

**STATE OF NORTH CAROLINA;**  
**ORANGE COUNTY**

I, a Notary Public of such Town and State, certify that \_\_\_\_\_ and \_\_\_\_\_ personally came before me this day and acknowledged that they are the \_\_\_\_\_ and the \_\_\_\_\_, respectively, of Self Help Ventures Fund, a corporation, and that by authority duly given and as the act of such corporation, the foregoing instrument was signed in the corporation's name by such \_\_\_\_\_, sealed with its corporate seal and attested by such \_\_\_\_\_.

**WITNESS** my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2021.

**[SEAL]**

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

[Agreement for  
2200 Homestead Road Site Development,  
dated as of \_\_\_\_\_, 2021]

**Attachment A – Legal description of Site**

[To come]

DRAFT

## **Schedule B -- Definitions; Rules of Interpretation**

**Definitions.** For all purposes of this Agreement, unless the context requires otherwise, the following terms have the following meanings.

“Budget” means the budget for the sources of uses of Project Funds referenced in Section 2B1.

“Business Day” means any day other than a day that Town offices have previously been scheduled to be closed.

“Closing” and “Closing Date” have the meanings assigned in Section 1C.

“Collaborative Developer” or “Developers” means the partners under the Memorandum of Understanding dated February 27, 2020 with the Town and SHVF, and specifically means CASA, Community Home Trust, and Habitat for Humanity of Orange County.

“Collaborative Development Contract” means an agreement between a Collaborative Developer and the Town for the vertical development of a portion of the Site as contemplated by Section 3.

“Completion Date” means the first date substantially all Project is complete.

“Deadline” means the deadline for Project completion as designated in Section 1D5.

“Deed” means the deed to convey the Site to SHVF referenced in Section 1C.

“Effective Date” has the meaning assigned in Section 6(n).

SHVF or the Town may be referred to individually as a “Party” and together as the “Parties.”

“Hope Gardens” or “ Hope Gardens Work” means the specific work and site relocation that support the nonprofit and student run Hope Gardens.

“Project” means the preparation of the Site to make it suitable for the vertical development contemplated by the Introduction, including carrying out the work contemplated by Site Development Contract.

“Project Costs” means all costs of carrying-out of the Project, including the costs of the design, planning, constructing, acquiring, installing, equipping of improvements to the Project. “Project Costs” includes sums required to reimburse SHVF for advances made for any costs otherwise described in this definition, and all financing costs.

“Site” means the parcel of approximately 14 acres located at 2200 Homestead Road, as more particularly described in Attachment A.

“Site Contractor” means any firm obligated to carry out any portion of the Project under the Site Development Contract.

“Site Development Contract” means any and all contracts between SHVF and one or more third party Site Contractors to carry out any portion of the Project.

“Town Maximum Contribution” means \$3,500,000, as the maximum amount the Town intends to pay toward Project Costs.

***Rules of Interpretation.*** Unless the context otherwise requires,

(a) An accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles, and any accounting term should be understood to include any successor term or other new term with a substantially equivalent function.

(b) Unless otherwise indicated, references to Sections and Attachments are to the Sections and Attachments of this Agreement.

(c) Words importing the singular will include the plural and vice versa, and words importing any gender will include all other genders.

(d) The headings on sections and articles are solely for convenience of reference. They do not constitute a part of this Agreement, nor should they affect its meanings, construction or effect.

(e) Reference to any statute or regulation should be understood to include any successor provision.

(f) The use of the term “including” should in all cases be understood to mean “including, without limitation.”

DRAFT



## **Attachment C – required contents of Collaborative Developer Agreements**

Each Collaborative Developer Agreement will be between the Town and a Collaborative Developer. It will include at least the information specified in this Attachment, and such other provisions as the Town may require or accept.

1. Name of developer entity, relationship to Collaborative member, and organization chart
2. A list of all its project team members including architects, civil engineer and legal counsel that will be involved in the transactions. This section includes any knowledge of proposed management entities or agents working on the collaborative member's project. The Town may require additional information on the identity and qualifications of organizations or individuals.
3. Proposed development program for the Site, including schematic design, development timeline, and physical descriptions such as number and square footage of each dwelling unit, bedroom and bathroom count for each unit, footprints of all proposed buildings, description of amenities, number and location of parking stalls, pedestrian and vehicular circulation, and allowances for access roads, utilities, setbacks and other site plan elements required by the Town's development standards.
4. Project financing plan: The financing plan will illustrate the developer's plan for how to finance the approved development plan, including the sources, amounts and timing of different funding sources and the sources and uses of funds. Each financing plan must also specify the terms of any expected Town financial participation. The financing plan must disclose all fees and all amounts paid to entities under common control. The financing plan must also include a 30-year pro forma of the development's financial performance and show provisions for adequate reserves for routine maintenance and capital repairs.
5. An undertaking to provide the Town with an as-built Survey and other as-built construction documents.

6. Affordability plan, stating each Collaborative Developer's program to insure extended long-term affordability consistent with that Developer's expertise and role in the overall collaborative. For example:

**CASA** will finance, construct, own, and manage affordable multifamily rental units targeting households between 0% and 80% of AMI. CASA is expected to partner with the UNC Horizons program to designate a portion (approximately 34 units in a single building) of the multifamily units for participants and/or graduates of the Horizons program. There are expected to be approximately 74 total multifamily rental units developed by CASA.

**Habitat for Humanity** will finance, construct, market, and sell approximately 18 affordable duplex units (9 buildings, each with two units) targeted to households earning between 30% and 80% of AMI, with the majority of units targeted to households below 60% AMI.

**Community Home Trust** will finance, construct, market, and find residents for approximately 26 affordable townhomes targeted to households earning between 65% and 115% of AMI. The vast majority of these units will be available for sale to first-time homebuyers; a small number of units may be used as affordable rentals serving households under 65% AMI.

7. Appropriate land use restrictions and covenants governing both the behavior of the Collaborative Developer and the land to provide for the Town's typical 99-year affordability period consistent with the affordability plan. The restrictions covenants will be in place prior to fee simple conveyance to the Collaborative Developer.
8. Appropriate representations and warranties from the Collaborative Developer as to such matters as existence and good standing, proper authorization, financial and technical capability, absence of litigation or conflict with other agreements, lack of debarment, and other customary matters.
9. Indemnification by the Developer of the Town with respect to all activities at the Developer's portion of the Site after conveyance.

10. Designation of appropriate project contact for decision making purposes. Additional provisions for notices, resolution of disputes and similar matters.

DRAFT

## Attachment D – Draft Project Budget

### ***Sources of funds***

*All sources are committed unless indicated otherwise.*

<b>Source</b>	<b>Tentative amount (\$)</b>
Town of Chapel Hill Affordable Housing Bond	3,300,000
Town of Chapel Hill AHDR	170,000
Orange County Affordable Housing Bond	1,500,000
Community Project Funding, Rep. Price <i>(anticipated)</i>	1,871,349
<b>TOTAL</b>	<b>6,841,349</b>

### ***Uses of funds***

*Numbers shown are preliminary and subject to change based on construction cost escalations and other unforeseen project costs that may arise.*

<b>Use</b>	<b>Tentative amount (\$)</b>
Site Development Costs	4,943,236
Contribution to Hope Gardens Site Costs	95,000
Hard Cost Contingency	988,647
Design, Survey, & Geotech Testing	289,435
Other Soft Costs	203,776
Developer Fee	321,255
<b>TOTAL</b>	<b>6,841,349</b>

\*Last updated October 1, 2021 by Self-Help Ventures Fund staff.