

RESOLUTION NO. 17-06

Resolution Of The City Council Of The City Of Emeryville Approving And Authorizing The City Manager To Commit To An Additional Development Loan In The Amount Of \$1,000,000 For A Total Loan Amount of \$4.5 Million Between The City Of Emeryville And EAH Inc., A California Nonprofit Public Benefit Corporation, For The Development Of Affordable Housing At 3706 San Pablo Avenue/1025 West Macarthur Boulevard, Emeryville, California

WHEREAS, on December 12, 2010, the Emeryville Redevelopment Agency (“Agency”) purchased the property at 3706 San Pablo Avenue, and on June 3, 2011 the Agency purchased the property at 1025 West MacArthur Boulevard (collectively hereinafter referred to as the “Site”) to facilitate development of the Site as affordable housing; and

WHEREAS, the Site was acquired by the Agency with funding from its Low and Moderate Income Housing Fund established pursuant to Health and Safety Code Section 33334.3; and

WHEREAS, effective February 1, 2012, the Agency was dissolved in accordance with Assembly Bill X1-26 (the “Dissolution Act”) and thus in anticipation of said dissolution on January 17, 2012, the City Council of the City adopted Resolution No. 12-12, thereby electing to serve as the Successor Agency to the Agency in order to wind down the affairs of the Agency and Resolution No. 12-15, thereby electing to retain the housing assets and functions of the Agency; and

WHEREAS, on March 6, 2012, the Successor Agency adopted Resolution No. SA04-12, thereby transferring the housing assets, including the Site, to the City as housing successor; and

WHEREAS, on April 10, 2012, the Emeryville Oversight Board adopted Resolution No. OB01-12, approving and ratifying the transfer of the housing assets, including the Site, from the Successor Agency to the City as housing successor; and

WHEREAS, on May 1, 2012, the City as housing successor, adopted Resolution No. 12-75, thereby accepting the housing assets, including the Site, from the Successor Agency; and

WHEREAS, on August 1, 2012, pursuant to Health and Safety Code Section 34176 (a)(2), the City as housing successor submitted its Housing Assets Transfer Form (“Form”) to the California Department of Finance, which housing assets included the Site, and thereafter, on August 31, 2012, the Department of Finance advised that it is not objecting to any of the assets listed on the Form and transferred to the City as housing successor, inclusive of the Site, and accordingly, the Site is a housing asset of the City as housing successor; and

WHEREAS, on September 4, 2012, the City Council approved a Request for Qualifications/Proposals (“RFQ/P”) that was distributed to potential developers for development of the Site as 100% affordable family housing; and

WHEREAS, on October 15, 2013, the City Council authorized the City Manager to negotiate an Exclusive Right to Negotiate Agreement (“ERN”) with EAH Inc., a California non-profit public benefit corporation (“EAH”) for development of the Site as an affordable housing project; and

WHEREAS, in accordance with the ERN, EAH prepared plans for development of the Site and submitted an application to the City for land use entitlements, and thereafter on January 22, 2015 the Planning Commission approved a conditional use permit and design review for the affordable housing project (UPDR 14-001); and

WHEREAS, on April 16, 2015 the City entered into a Ground Lease Disposition and Development Agreement (“DDA”) governing the terms under which the City will ground lease the Site to EAH for 55 years and EAH will develop an eight-seven (87) unit, affordable, multi-family residential rental development (the “Project”) on the Site; and

WHEREAS, on February 16, 2016 the City Council adopted Resolution No. 16-16 committing \$3,500,000 in loan funds to the Project; and

WHEREAS, due to increased construction activity in the San Francisco Bay Area, the Project’s construction costs have increased more than anticipated; and

WHEREAS, the Project requires an additional \$1,000,000 in loan funds, for a total loan amount of \$4,500,000 to make the project feasible; and

WHEREAS, there are sufficient funds in the Housing Asset Fund (Fund 298) and the Affordable Housing Impact Fee Fund (Fund 239) to provide the total loan amount; now, therefore, be it

RESOLVED, that the City Council hereby authorizes the City Manager or her designee to provide a commitment to an additional loan in an amount not to exceed \$1,000,000, for a total loan amount not to exceed \$4,500,000, to EAH, Inc., or to an affiliated entity approved by the City Manager or her designee, to be used for development of the Project; and be it further

RESOLVED, that the loan shall be for a maximum term of 75 years, with an interest rate of 3%, with repayment to the City from surplus cash flow from the Project during the term of the loan, with the balance due at the end of the term; and be it further

RESOLVED, that as a condition of the loan, the City will require that appropriate restrictions on Project occupancy, rents and operations be recorded against Project improvements; and be it further

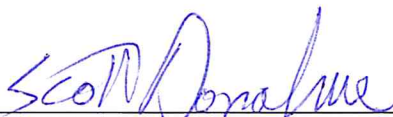
RESOLVED, that the loan shall be secured by a deed of trust on the Project land and/or improvements; and be it further

RESOLVED, that the loan funds shall be reserved no later than June 30, 2017 and shall be subject to reprogramming at the end of this period unless EAH, Inc. has secured commitments for full Project funding or provided other assurances of adequate Project funding that the City Manager or his or her designee deems sufficient within his or her discretion, within the reservation period; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby approves the commitment of an additional \$1,000,000, for a total amount not to exceed \$4,500,000 in loan funds to EAH, Inc., or to an affiliated entity approved by the City Manager or his or her designee, to be used for development of 3706 San Pablo Avenue/1025 West MacArthur Boulevard, as evidenced by the Loan Commitment Letter attached hereto as Exhibit A, together with such further revisions as may be agreed to by the City Manager and City Attorney which do not materially increase the obligations of the City thereunder.

ADOPTED by the City Council of the City of Emeryville at a special meeting held Tuesday, January 17, 2017 by the following vote:

AYES:	<u>5</u>	Mayor Donahue, Vice Mayor Bauters and Council Members Martinez, Medina and Patz
NOES:	<u>0</u>	_____
ABSTAIN:	<u>0</u>	_____
ABSENT:	<u>0</u>	_____



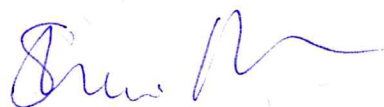
MAYOR

APPROVED AS TO FORM:

ATTEST:



CITY ATTORNEY



CITY CLERK



City of Emeryville

INCORPORATED 1896

1333 Park Avenue

Emeryville, California 94608-3517

Tel: (510) 596-4300 | Fax: (510) 596-4389

January 18, 2017

Mary Murtagh
President & CEO
EAH, Inc.
2169 E. Francisco Blvd, Suite B
San Rafael, CA 94901

Re: 3706 San Pablo Avenue and 1025 West MacArthur Boulevard Development Loan Commitment

Dear Ms. Murtagh:

The City of Emeryville ("City") is pleased to be able to assist EAH, Inc. A California Nonprofit Public Benefit Corporation, Or Its Assignee ("Developer") in the construction of the 3706 San Pablo Avenue project (the "Project"), located at 3706 San Pablo Avenue/1025 West MacArthur Blvd in Emeryville. On February 16, 2016, the City committed to providing a Development Loan in the amount of \$3.5 million to EAH (Resolution No. 16-16). This letter confirms that the City Council has authorized an additional development loan in the amount of One Million Dollars (\$1,000,000) for the Project.

The following sets forth the terms and conditions under which the City shall provide the loan for the Project:

1. Project Attributes

This commitment of financing is for the specific project as described in the Ground Lease and Disposition and Development Agreement (DDA) dated April 16, 2015 and includes the following attributes:

- Unit Configuration: new construction of **87** total units, consisting of 4 studio units, 8 one-bedroom units, 45 two-bedroom units, 23 three-bedroom units and 4 four-bedroom units (including 1 unrestricted three-bedroom manager's unit);
- Affordability: **26** units with rents not more than 30% of 30% Area Median Income ("AMI"), **9** units with rents not more than 30% of 40% AMI, **35** units with rents not more than 30% of 50% AMI, **16** units with rents not more than 30% of 60% AMI and **1** manager's unit;

Exhibit A

- **Target Population:** The Project will include 11 supportive housing units, 5 of which will be targeted to individuals with HIV/AIDS (Housing Opportunities for Persons with AIDS or “HOPWA”) and 6 of which will be targeted to individuals with development disabilities.
- **Leveraging of Other Funds:** The loan commitment of **One Million Dollars (\$1,000,000)** in City funds will equal no more than 9% of the residential portion of the Project’s total development costs.
- **Supportive Services:** The Project will provide supportive services to the HOPWA units through the Aids Project of the East Bay. It will also partner with East Bay Innovations to provide services for people with developmental disabilities. In addition, a half-time resource coordinator will be on-site to provide residential supportive services to all tenants through resource and referral, programing and event.

2. Terms of Loan Repayment; Interest Rate

The additional City loan totaling \$1,000,000 shall be for a term of for the time period during which the property is regulated by the Affordable Housing Covenant with the City, with a maximum simple interest rate of 3% per year. Prior to the end of loan term, the loan shall be repaid from surplus cash flow, or from the City pro-rata share of project surplus cash flow.

3. Length of Funding Reservation

Loan funds will be reserved no later than June 30, 2017. **The commitments for this loan will expire if the Project does not have commitments for full Project financing and is not able to move forward prior to June 30, 2017.**

4. Source of Funds

Funds for this project have been reserved from the City’s Housing Asset Fund (Fund 298) and the Affordable Housing Impact Fee Fund (Fund 239). The Project must comply with all restrictions imposed by those programs.

5. Reserve Requirements

This Project must meet the City’s requirements for deposits to replacement reserve and operating accounts for the time period during which the property is regulated by the Affordable Housing Covenant with the City.

- **Replacement Reserve:** 0.6% of the replacement cost of the structure annually, up to \$600 per unit for family developments or \$500 per unit for senior developments.
- **Operating Reserve:** An initial operating reserve of *at least* 2% of the gross rental income, which must be capitalized on a monthly basis until the reserve reaches an amount equal to six months operating costs (including debt service costs). The operating reserve must be maintained at this level.

6. Accessibility

The Developer must develop the Project and maintain the Project in compliance with all applicable federal, state and local requirements regarding access for disabled persons.

7. Marketing Requirements

All Project units must be marketed in accordance with the City's Marketing Procedures. A final marketing plan and management agreement, as components of the Final Management Plan, must be submitted by the City at least 180 days before construction is complete, or the beginning of marketing activities, whichever is first. The City will review the Final Management Plan within 30 days of receipt of complete submittal. Copies of all marketing materials must be provided to the City as part of the Final Management Plan.

8. Employment Programs

The following City contracting and employment programs apply to this project:

- Living Wage
- Prevailing Wage
- Minimum Wage and Paid Sick Leave

Prevailing wage determinations are made by the State of California and the federal government and should be requested from the State and the federal government as early as possible.

9. Subordination of City Security Interests

In certain cases, the City may agree to take a subordinate lien position to other financing in regards to its deed of trust. Conditions of such an agreement, which must protect the City's right to cure defaults under other loan agreements and, if curing default, the City's right to transfer the property to an alternate lessor without acceleration of other financing, must be negotiated well before other financing is scheduled to close.

10. Closing the Loan

City Manager is authorized to negotiate loan documents with the Developer within the parameters outlined in this letter and the attached City Council Resolution, with the resulting loan documents requiring City Council approval. To ensure that City documents are signed in a timely manner, final negotiations must be concluded and documents approved by the Developer, City staff, and appropriate attorneys **at least eight weeks prior** to any deadlines for loan closing imposed by other lenders or financing programs. Prior to this, **Developer must allow at least three additional months for negotiations** of the loan documents. Please note that City staff will need to review documents for any other non-City loans prior to the closing of that financing. Please notify the other funders of this requirement and ask them to provide those documents at least a month prior to their closing deadlines. Staff cannot ensure that projects that do not meet this timeline will be signed prior to outside deadlines. The Developer must provide a written schedule for negotiations and closing when commitments for full project financing are achieved.

In addition to approved loan documents, the following documents (at a minimum) must be approved by City staff prior to loan closing:

1. Final development budget
2. Final operating budget
3. 30-year proforma
4. Marketing plan
5. Management plan (including the Management Contract)
6. Firm commitments for full project financing
7. Evidence of insurance that meets City guidelines
8. Loan documents from the other funding sources closing at the same time
9. Sufficient evidence that funds for the supportive services component of the project will be available at the time of occupancy.

If loans from other funding sources are closing at different times, City of Emeryville Economic Development and Housing staff must also review those documents prior to their closing.

11. Beginning Construction

Construction may not begin prior to the City's issuance of a Notice to Proceed for the Project. At a minimum, approval of the following documents is required to issue the Notice to Proceed:

1. Construction contract approved by City
2. Payment and performance bonds
3. Evidence of contractor's insurance that meets City guidelines
4. Construction budget and schedule approved by City

12. Project Closeout

In order to release the final administrative fee payment, the following documents must be approved by the City after project completion:

1. Cost certification
2. Demographic and income information of occupants
3. Certification of completion and compliance by project architect
4. A copy of the recorded Notice of Completion
5. Final Rent Schedule

13. Updates

The Developer is required to provide updates to the assigned Housing Coordinator a minimum of once a month regarding relevant progress on the project including design and permitting, financing, changes to the schedule and budget, and other project issues.

To acknowledge your receipt of this award letter, please sign and date the bottom of this page and return within a week of receipt to Michael Guina, City Attorney, 1333 Park Avenue, Emeryville, CA 94608. We are exciting to work with you and your staff as the Project continues to move forward.

Sincerely yours,

Carolyn Lehr
City Manager

Enclosure: City Resolution

The foregoing is accepted by EAH, Inc.
on _____, 2017:

President & CEO
EAH, Inc.