



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** October 29, 2024  
**TO:** Adam Politzer, Interim City Manager  
**FROM:** Chadrick Smalley, Community Development Director  
**SUBJECT:** **Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute The First Amendment To First Amended And Restated Ground Lease And Affordable Housing Agreement Between The City Of Emeryville And Emeryvilla Apartments L.P., And Other Related Documents For The Emeryvilla Senior Apartments Development At 4320 San Pablo Avenue**

### RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to execute the First Amendment To First Amended and Restated Ground Lease, Affordable Housing Agreement, and other documents related to the refinancing of the Emeryvilla Senior Housing development, located at 4320 San Pablo Avenue.

### BACKGROUND

The development of Emeryvilla Senior Housing began in January 1989, when the Emeryville Redevelopment Agency (“Former Agency”) selected Bridge Housing Corporation (“Bridge”) to serve as the developer of the project. In June 1989, the Former Agency adopted Resolution No. 44-89 which authorized the Former Agency and Bridge to enter into a ground lease for the development of 4320 San Pablo Avenue (APN 049-1079-18) as a 50-unit senior housing complex with 49 units set-aside for low- and moderate-income [i.e. 80-120% of Area Median Income (“AMI”)] seniors and one manager’s unit. In February 1990, Bridge established Emeryville Senior Housing, Inc (“ESHI”) and assigned their rights under the Ground Lease to ESHI. In August 1991, the Former Agency adopted Resolution No. 46-91 authorizing the execution of the first Amended and Restated Ground Lease to provide for the inclusion of the property at 4328 San Pablo Avenue (APN 049-0179-19-2) for the development of the project. In September 1991, ESHI entered into a Housing Assistance Payment Contract with the U.S. Department of Housing and Urban Development (“HUD”) to provide rental assistance for forty-nine (49) of the units to low-income (i.e. 80% AMI) elderly households (the “HUD Contract”), and in June 1992 construction was completed and leasing of the units commenced.

In February 2012, the Former Agency was dissolved in accordance with Assembly Bill 26 and the City Council adopted Resolution No. 12-12 electing to have the City serve as Successor Agency to the Former Agency, and Resolution No. 12-15 electing to have the City retain the housing assets and functions previously performed by the Former Agency.

In May 2012, the City Council accepted the transfer of the housing assets and functions, including the Ground Lease for Emeryvilla Senior Housing, via Resolution No. 12-75.

## **DISCUSSION**

In May 2024, Bridge contacted City staff regarding the need to refinance their existing loan, which is set to mature in October 2024, into a new loan which will be with Fannie Mae. Refinancing the loan is critical because it will help ensure the project has long term financial viability and ensure the continued operation of much needed affordable housing for Emeryville's senior population. Due to differing lender requirements, and a desire to extend the term of the Ground Lease, amendments to the Ground Lease are required to accommodate the refinancing.

Upon review of the project file, staff found that there had never been an Affordable Housing Agreement executed or recorded against this project, as is the City's current practice. Typically, the City's Affordable Housing Agreements outline the rent, income, marketing, and reporting requirements the project must comply with. Some of these terms were embedded in the Ground Lease, but with less detail than the City's typical Affordable Housing Agreements.

In negotiating the terms of the Ground Lease amendment, staff requested that Bridge also execute an Affordable Housing Agreement to codify the requirements the City expects Bridge to continue to follow while renting the affordable housing units and to address any conflicts between the Ground Lease and the HUD Contract.

### Ground Lease Amendment

The Ground Lease addresses the operation of the development. The First Amendment to the First Amended and Restated Ground Lease is attached to this report as Exhibit A to the resolution. The following is a summary of the main substantive terms of the Amended and Restated Ground Lease:

- Parties: The City of Emeryville is the Lessor and the Emeryvilla Apartments L.P. is the Lessee to the Ground Lease.
- Term: The term of the Lease shall terminate ninety-nine years from the execution of this Lease, (i.e. 2123). The current Ground Lease expires in 2067.
- Status of Ground Lease during Foreclosure Sale: The Lease may be assigned or transferred without the consent of the City, to the purchaser at any foreclosure sale arising from a mortgage encumbrance, but any such purchaser shall be liable to perform the obligations imposed within the lease and all provisions regarding occupancy and rent shall remain in full force and effect. Any encumbrances to the property shall require written consent by the City, not to be unreasonably withheld, conditioned or delayed.

- City Requirement during Foreclosure by Lender: In the case of default by Lessee in the payment of money, the City agrees to take no action to exercise any other remedy unless the default is not cured within 30 days of the service of notice to holders of Permitted Encumbrances. In the case of default by Lessee for non-monetary items, this period is 90 days. The City shall be entitled to enforce the provisions of the Lease and the Affordable Housing Agreement after providing notice and cure rights outlined in the Lease and Affordable Housing Agreement.

### Affordable Housing Agreement

The Affordable Housing Agreement is attached as Exhibit A to the Amended and Restated Ground Lease. The following is a summary of the main terms of the Affordable Housing Agreement:

- Rent & Income Restrictions: 49 of the units shall be rented at affordable rents and occupied by Low-Income Households (80% AMI). Preference shall be given to people who are elderly as defined by HUD. No more than once per year the Lessee may adjust rents in occupied units in accordance with the City's published rent ceilings for applicable unit size and income level. Lessee must notify tenants in writing of any increase in a tenant's monthly rent 60 days in advance of the effective rent date. Lessee shall recertify the income of the household to determine income eligibility on an annual basis. If the household income exceeds the applicable income limit for the unit but does not exceed 120% AMI, the occupants shall be allowed to remain in the affordable unit and the Lessee shall be allowed to increase the rent to a rent amount that does not exceed the maximum rent for household at 120% AMI. If the household income exceeds 120% AMI, the occupant shall be given a 90-day notice of termination of lease and the Lessee shall re-lease the unit to an income eligible household.
- Marketing Plan: Lessee shall 1) provide a marketing plan for any existing vacant units within 30 days of the execution of the Affordable Housing Agreement for the City's review and approval, 2) provide any updates to the marketing plan with each annual report submitted to the City, and 3) update the marketing plan at least once every five years, or as requested by the City.
- Reporting Requirements: Lessee shall submit to the City an annual report between March 1<sup>st</sup> and March 15<sup>th</sup> of each year to include a cover letter describing any problems experienced during the reporting period, an executed certificate of continuing program compliance, the current marketing plan, the current form of lease agreement, the utility allowance,

the income certification worksheet and annual financial report. Lessee shall pay \$100 in liquidated damages to the City for the first violation of failing to submit the annual report for each day the report is late, and \$500 per day in liquidated damages for each subsequent violation of failing to submit the annual report.

- Management of Units: The City has approved Bridge Property Management as the property management agent. A new property management agent shall not be hired without the City's prior approval. If the primary property management staff assigned to the project changes, the new staff shall be required to attend a one-on-one training session with the City within 10 days of staff changes. Property Management leasing staff must participate in Fair Housing Training at least once every two years.
- Maintenance: The Lessee shall maintain the project in accordance with the maintenance standards defined within the agreement.
- Duration: The restrictions within the agreement shall remain in effect for ninety-nine (99 years) from the effective date of the agreement.
- Default: Any failure of the Lessee to perform any term or provision within the agreement shall constitute a Default and the Lessee has thirty (30) days to cure it.
- Expenses: Lessee shall annually pay the City monitoring and enforcement fees in accordance with the City's Master Fee Schedule.

#### Alignment with the 2023-2031 Housing Element

Amending the Ground Lease and executing an Affordable Housing Agreement at Emeryvilla Senior Apartments supports the following policies within the current Housing Element:

- Policy H-2-3: Preserve "at-risk" affordable rental units through monitoring, working with nonprofits, and exploring available funding sources to preserve affordability.

#### **FISCAL IMPACT**

The Emeryvilla senior housing development is already a part of the City's Below Market Rate housing inventory, therefore the proposed Amended and Restated Lease and accompanying Affordable Housing Agreement has no fiscal impact on the City.

#### **CONCLUSION**

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to execute the Amended and Restated Ground Lease, Affordable Housing Agreement, and all associated documents related to the refinancing of Emeryvilla Senior Apartments. Emeryvilla Senior Apartments is an important asset in the City's Housing portfolio and these recommended changes will ensure that this asset can be preserved and maintained long term and continue to provide much needed affordable housing for Emeryville's senior population.

**PREPARED BY:** Valerie Bernardo, Community & Economic Development Coordinator II

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



---

Adam Politzer, Interim City Manager

**ATTACHMENTS**

- Draft Resolution, including
  - Exhibit A: Amended and Restated Ground Lease, with
    - Exhibit A: Affordable Housing Agreement