



City of Emeryville

CALIFORNIA

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT 4300 SAN PABLO AVENUE, EMERYVILLE, CA SECOND AMENDMENT

THIS SECOND AMENDMENT TO THE EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT 4300 SAN PABLO AVENUE, EMERYVILLE, CA ("Amendment") is effective as of this _____ day of _____, 2021, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **EAH INC.** ("Developer"), individually referred to as a "Party" and collectively as the "Parties."

WITNESSETH THAT

WHEREAS, the City and Developer entered into an Exclusive Right to Negotiate Agreement dated October 29, 2020, ("Agreement") for the purpose to set forth the terms and conditions under which the City and Developer exclusively negotiate the terms and conditions of a proposed Lease Disposition and Development Agreement ("**LDDA**") for the construction, establishment and operation an affordable senior/inter-generational housing development containing no less than 68 rental residential units affordable to tenants whose incomes are no greater than 80% AMI, located at 4300 San Pablo Avenue, Emeryville, CA; and

WHEREAS, pursuant to Section 1.1 of the Agreement, within ninety (90) calendar days of the Effective Date, the Parties agree to prepare an initial, non - binding Term Sheet to use as a general basis for negotiating key terms and provisions of the LDDA (the "Term Sheet")

WHEREAS, pursuant to Section 2.1 of the Agreement, the term of the Agreement was originally set to expire on Tuesday, April 27, 2021; and

WHEREAS, pursuant to Section 2.2, the Parties entered into the First Amendment to the Agreement in which the City Manager extended the term of the Agreement for an additional 180 days so that the Agreement expires on Friday, October 22, 2021; and

WHEREAS, the City Council finds that the Parties have engaged in good faith negotiations, have made substantial progress towards the development of the LDDA, and desires to extend the term of the Agreement to allow for continuation of the negotiations; and

WHEREAS, the public interest will be served by this Amendment.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

City of Emeryville Exclusive Right to Negotiate 4300 San Pablo Avenue, Emeryville, CA Second Amendment

1. RECITALS

The foregoing recitals are true and correct and incorporated by reference.

2. AMENDMENT

2.1 The Parties agree to amend Section 2.1 of the Agreement to extend the term of the Agreement to **January 20, 2022**.

2.2 The Parties agree that the City Manager may further extend the term of the Agreement again pursuant to Section 2.1 of the Agreement.

3. CONTINUING EFFECT OF AGREEMENT

Except as amended by this Amendment, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

4. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment

5. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect

6. WAIVER

The City's failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.


SIGNATURES ON FOLLOWING PAGE

City of Emeryville Exclusive Right to Negotiate 4300 San Pablo Avenue, Emeryville, CA Second Amendment

7. SIGNATURE PAGE TO EXCLUSIVE RIGHT TO NEGOTIATE 4300 SAN PABLO AVENUE, EMERYVILLE, CA, SECOND AMENDMENT

IN WITNESS WHEREOF the City and the Developer have executed this Agreement, which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:

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Interim City Attorney

Dated:

CITY OF EMERYVILLE

_____, 2021

Christine S. Daniel, City Manager

Dated:

EAH INC., A CALIFORNIA NONPROFIT CORPORATION

September 28, 2021



(Signature)
Welton Jordan, Chief Real Estate Development Officer