

AMENDMENT TO AFFORDABLE HOUSING LOAN AGREEMENT

THIS AMENDMENT TO AFFORDABLE HOUSING LOAN AGREEMENT (this “**Amendment**”) is entered into effective as of _____, 2015 (“**Effective Date**”) by and between the City of Morgan Hill, a municipal corporation (“**City**”) and EAH Inc., a California nonprofit public benefit corporation (“**Developer**”). The City and the Developer are collectively referred to herein as the “**Parties**.”

RECITALS

A. The Parties entered into that certain Affordable Housing Loan Agreement dated as of August 7, 2014 (the “**Loan Agreement**”). Capitalized terms used without definition herein shall have the meaning ascribed to such terms in the Loan Agreement.

B. Pursuant to the Loan Agreement, Developer agreed to construct, own and operate an affordable multi-family mixed-use project on the property acquired by Developer and located within the City of Morgan Hill, Santa Clara County, California, known as 40 E. Dunne Avenue (Assessor’s Parcel No. 817-01-031) (the “**Dunne Avenue Site**”) and 16170 and 16180 Monterey Road (Assessor’s Parcel Nos. 817-03-003 and -004) (the “**Monterey Road Site**”).

C. Pursuant to the Loan Agreement, the City agreed to provide a loan to Developer in the amount of Three Million, Six Hundred Twenty-Two Thousand Dollars (\$3,622,000) (the “**Loan**”) upon the terms and conditions and for the purposes set forth in the Loan Agreement to assist with acquisition of the Dunne Avenue Site and the Monterey Road Site and with certain predevelopment expenses. The Loan is evidenced by a secured promissory note executed by Developer and dated as of August 15, 2014, and is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) dated as of August 15, 2014 and recorded in the Official Records of Santa Clara County against the Dunne Avenue Site and the Monterey Road Site on August 28, 2014 as Instrument No. 22689671.

D. The Parties desire to amend the Loan Agreement in order to add property to the Project site and to increase the Loan amount, subject to satisfaction of certain conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Incorporation of Recitals. The Parties acknowledge the truth of the foregoing Recitals, which by this reference are incorporated into this Amendment.
2. Conveyance of Property; Modification of Property Description. City agrees to convey, or cause to be conveyed, to Developer, that certain real property located at Monterey and Ciolino Streets, known as Villa Ciolino Parcel B (as more particularly described in Exhibit A attached hereto, “**Parcel B**”). The Parties agree that all references to the “Property” in the Loan

Agreement shall mean collectively, the Dunne Avenue Site, the Monterey Road Site and Parcel B.

3. Modification of Project Description. Developer agrees to develop Parcel B as an eight (8) unit residential project that will be affordable to households with household income of not greater than 60% of Area Median Income (the “**Parcel B Project**”). Developer agrees that the Monterey Road Site will be developed to include six (6) units for Transition Age Youth (TAY) that will be affordable to transitional aged youth whose household income is not more than 30% of Area Median Income (the “**TAY Component**”). The Parties agree that all references to the “Project” in the Loan Agreement shall mean collectively, the Project as described in the Loan Agreement including the TAY Component, and the Parcel B Project.

4. Increase in Loan Amount. Conditioned upon Developer’s acceptance of Parcel B, commitment to develop the TAY Component on the Monterey Road Site, and commitment to develop Parcel B with housing affordable to households with household income of not greater than 60% of Area Median Income, City agrees to increase the amount of the Loan by the sum of Eight Hundred Seventy-Eight Thousand Dollars (\$878,000) so that the total amount of the Loan will be Four Million, Five Hundred Thousand Dollars (\$4,500,000). The \$4,500,000 will include increasing the \$500,000 predevelopment funding to \$620,000, a \$120,000 increase for predevelopment costs for Villa Ciolino Parcel B.

5. Modification of Documents. Developer agrees to execute and deliver to City an amended and restated promissory note in form approved by City, reflecting the increase in the Loan amount. The Parties agree to execute and record in the Official Records: (i) an amendment to the Deed of Trust reflecting the addition of Parcel B to the Property description and stating that the Deed of Trust secures the amended and restated promissory note, and (ii) an amendment to the Regulatory Agreement to add Parcel B to the Property description, and modifying the Project description to include the development of Parcel B and the inclusion of the TAY Component, and the associated affordability and occupancy restrictions.

6. Further Assurances; Cooperation. The Parties agree to execute such further instruments and to take such further actions as may be necessary or desirable in order to implement this Amendment, including without limitation the execution, delivery and recordation, as applicable, of the amendments and documents described in Section 5 above. The Parties further agree to cooperate in order to facilitate the conveyance of Parcel B to Developer either directly from City, or from the current owner of Parcel B (“**Current Owner**”). The Parties acknowledge that pursuant to that certain Settlement Agreement executed by and between City and affiliates of the general partner of the Current Owner, the Current Owner is obligated to convey Parcel B to City or City’s designee. If it is determined that Parcel B will be conveyed directly to Developer from the Current Owner, then City agrees to provide financing to Developer for such acquisition in the form of a residual receipts loan, payable in 55 years, in the amount of the fair market value of Parcel B, which the Parties agree is equal to Three Hundred Sixty-Six Thousand, Three Hundred Fifty-Nine Dollars (\$366,359), provided that the Current Owner agrees to reimburse City for such financing.

7. Loan Agreement Remains Effective. Except as modified by this Amendment, the Loan Agreement remains unchanged and in full force and effect.

8. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

9. Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, the Parties have entered into this Amendment effective as of the date first written above.

DEVELOPER:

EAH Inc.,
a California nonprofit public benefit corporation

By: _____

Print Name: _____

Title: _____

CITY:

CITY OF MORGAN HILL, a municipal corporation

By: _____

Print Name: _____

Title: Steve Rymer, City Manager

APPROVED AS TO FORM:

Renee Gurza, City Attorney

EXHIBIT A

VILLA CIOLINO PARCEL B PROPERTY

LEGAL DESCRIPTION

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 3, 2002 IN BOOK 755 OF MAPS AT PAGES 31 AND 32.

APN: 767-09-029

ARB: 770-11-66.04.02