



File #: 15-576, Agenda Date: 9/2/2015, Version: 1

SUPPLEMENTAL CITY COUNCIL STAFF REPORT

MEETING DATE: SEPTEMBER 2, 2015

PREPARED BY: Rebecca Garcia, Housing Manager/Community Development
APPROVED BY: City Manager

EAH FIRST AMENDMENT TO LOAN AGREEMENT FOR DEVELOPMENT OF SCATTERED SITE HOUSING PROJECT

RECOMMENDATION(S):

Adopt resolution:

1. Authorizing the City Manager to execute a First Amendment to the EAH Affordable Housing Loan Agreement, and related financing documents to increase the loan from \$3,622,000 to \$4,500,000 for the purpose of constructing the Morgan Hill Family multi-site affordable housing development; and
2. Authorizing the City Manager to execute and administer a sale/transfer or financing agreement to facilitate the City's contribution of the third site, Villa Ciolino "Parcel B", to EAH Housing.

NARRATIVE:

Upon consulting with outside Counsel, the EAH Loan amendment has been revised to include language that provides clarity as to how "Villa Ciolino Parcel B" will be transferred to EAH for the purposes of applying for and ensuring an accurate score in the State's Tax Credit Allocation Committee application process. The redline version is attached for reference. There are no additional changes to the original staff report.

LINKS/ATTACHMENTS:

1. Redline Version of EAH Loan Amendment
2. Final Version of EAH Loan Amendment
3. Resolution

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, If City obtains title to~~ 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**”), ~~City agrees to convey~~ transfer such property to Developer for development of the Parcel B Project (described below). Alternatively, if City does

not obtain title to Parcel B, City will provide a loan to Developer in accordance with the terms set forth below to enable Developer to acquire Parcel B from the current owner. The Parties agree that upon conveyance transfer (by conveyance or acquisition) of Parcel B to Developer, all references to the "Property" in the Loan Agreement shall mean collectively, the Dunne Avenue Site, the Monterey Road Site-1 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 Project~~ will ~~be developed to include~~ at least 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 and Predevelopment Funding. 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.~~ City agrees that up to Six Hundred Twenty Thousand Dollars (\$620,000) of the Loan proceeds may be used for predevelopment expenses. This represents an increase of One Hundred Twenty Thousand Dollars (\$120,000) over the amount previously authorized for predevelopment expenses.

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 transfer of Parcel B to Developer either directly from City, or from with will allow to permit the Developer's purchase acquisition 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 sold acquired by 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

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. If City obtains title to 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**”), City agrees to transfer such property to Developer for development of the Parcel B Project (described below). Alternatively, if City does not obtain title to Parcel B, City will provide a loan to Developer in

accordance with the terms set forth below to enable Developer to acquire Parcel B from the current owner. The Parties agree that upon transfer (by conveyance or acquisition) of Parcel B to Developer, 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 Project will include at least 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 and Predevelopment Funding. Conditioned upon Developer’s acceptance of Parcel B, commitment to develop the TAY Component, 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 City agrees that up to Six Hundred Twenty Thousand Dollars (\$620,000) of the Loan proceeds may be used for predevelopment expenses. This represents an increase of One Hundred Twenty Thousand Dollars (\$120,000) over the amount previously authorized for predevelopment expenses.

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 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 transfer of Parcel B to Developer either directly from City, or to permit the Developer’s acquisition from the current owner of Parcel B (“**Current Owner**”). If it is determined that Parcel B will be acquired by 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).

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

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LEGAL DESCRIPTION

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

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APN: 767-09-029

ARB: 770-11-66.04.02

RESOLUTION NO: _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE CITY MANAGER TO EXECUTE THAT CERTAIN FIRST AMENDMENT TO THE LOAN AGREEMENT, PROMISSORY NOTE AND RELATED FINANCING DOCUMENTS WITH EAH HOUSING FOR THE PURPOSES OF CONSTRUCTING A MULTI-SITE AFFORDABLE HOUSING DEVELOPMENT AND TO TAKE ANY AND ALL RELATED MEASURES TO FACILITATE COMPLETION OF THE PROJECT PURSUANT TO ALL AUTHORIZED AGREEMENTS

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California (“City”), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled “FIRST AMENDMENT TO EAH LOAN AGREEMENT” submitted for City Council consideration at its meeting of September 2, 2015 submitted to the City Council by the City Manager (the “Staff Report”), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which meeting the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the activities allowed under this Resolution are categorically exempt under the provisions of California Environmental Quality Act of 1970, together with guidelines promulgated thereunder, and specifically pursuant to Section 15332 of the CEQA Guidelines (Infill Development Projects); and

WHEREAS, the City Council adopted a resolution on August 6, 2014 authorizing the City Manager to execute a Loan Agreement in the amount of \$3,622,000 for the two initial sites, 40 E. Dunne Avenue and 16170-16180 Monterey Road, for the development of the Morgan Hill Family and Transitional Age Youth (TAY) housing project, with the intent of returning to City Council to amend the loan to include a third site located at 16873 Monterey Rd, also known as "Villa Ciolino Parcel B" site when it was evident that the site could be acquired from South County Housing, and

Villa Ciolino Partnership as part of a South County Housing settlement transaction. The Loan Agreement would then be increased to \$4.5 million to meet the gap financing need for all three sites, supporting 41 units; and

WHEREAS, it has been recommended that City Council authorize the City Manager to execute a First Amendment to the EAH Affordable Housing Loan Agreement, promissory note and related financing documents to increase the loan from \$3,622,000 to \$4,500,000 for the purpose of constructing the Morgan Hill Family and Transitional Age Youth housing project, as a three site, affordable housing development; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the First Amendment to the Loan Agreement with EAH Housing for the Morgan Hill Family and Transitional Age Youth three-site affordable housing project substantially in the form attached hereto as EAH Loan Amendment and incorporated herein by this reference (the "Agreement") is hereby approved.
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form attached hereto; provided, specifically, that the total amounts to be paid by City under the Agreement shall in no event exceed four million five hundred thousand Dollars (\$4,500,000).
- c. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer, a sale/transfer or financing agreement in order to facilitate the City's contribution of the third site, Villa Ciolino "Parcel B", to EAH Housing.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 2nd day of September, 2015 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on September 2, 2015.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, CITY CLERK