



Office of the City Manager

CONSENT CALENDAR

December 17, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Jane Micallef, Director, Health, Housing & Community Services Department

Subject: Second Option Agreement for 3135 Harper Street and Extension of Housing Trust Fund Reservations

RECOMMENDATION

Adopt a Resolution:

1. Approving a Second Option Agreement between the City of Berkeley and Satellite AHA Development, Inc., related to the disposition and development of the City-owned property at 3135 Harper Street in Berkeley; and
2. Extending the expiration date for the Housing Trust Fund reservation of \$2,300,000 for 3135 Harper Street from December 31, 2013 to June 30, 2014; and
3. Revising the date by which the alternate Housing Trust Fund reservations approved by Council in Resolution No. 65,962-N.S. are approved if financing for 3135 Harper Street is not secured from December 31, 2013 to June 30, 2014.

SUMMARY

On December 11, 2012, the City Council approved a \$2.3 million Housing Trust Fund (“HTF”) reservation for Satellite Affordable Housing Associates (“SAHA”, as the successor to Satellite Housing) to enable the development of the City-owned lot at 3135 Harper Street as affordable senior housing (“Harper Crossings”; “Project”). Council also approved on December 11 an alternate set of HTF reservations as a contingency use of funds if SAHA was unable to fully finance the Project by December 31, 2013. On February 5, 2013, the City further approved an Option Agreement (“Option”), which gave Satellite AHA Development, Inc. (the development affiliate of SAHA), certain rights regarding the purchase of the Project site. The Option carries an automatic expiration date of December 31, 2013 if SAHA and the City have not by that time executed a Disposition and Development Agreement (“DDA”) for the Project.

SAHA will not meet the terms of the Option because the Project's initial financing projections, including a competitive application for 9% low-income housing tax credits, relied upon an allocation of project-based Housing Choice Vouchers (PBVs), which the Berkeley Housing Authority was unable to provide. SAHA pursued alternate funding opportunities, however, and succeeded in securing \$615,000 in Affordable Housing Program ("AHP") funds in August and another \$3 million in State funding in November. These new funds make Harper Crossings very competitive in a 9% tax credit application. (Note that while the State funding awards remain conditional as of the submission of this report, Housing and Community Development ("HCD") staff have advised SAHA that the ongoing review process is now technical in nature, and there is no reason to believe that final award approvals will not be forthcoming. SAHA achieved a perfect score in HCD's Infill Infrastructure Grant competition ("IIG"), and scored 376 out of 380 in HCD's Transit-Oriented Development competition ("TOD").)

Since the Option Agreement did not include amendment provisions, staff recommends that Council approve a Second Option Agreement with updated but nearly identical terms as the first Option. The only substantive change to the Option would be a new termination date of June 30, 2014. This extended term will allow SAHA to apply for 9% tax credits on March 5, 2014. Staff also recommends that Council approve June 30, 2014 as the date by which the alternate set of HTF Reservations are approved, should SAHA fail to secure requisite financing for Harper Crossings.

FISCAL IMPACTS OF RECOMMENDATION

Harper Crossings's development depends not only on an allocation of tax credits but upon the City's continued commitment of funding. In addition to the City's existing HTF reservation of \$2.3 million, the City agreed in the Project's existing Option Agreement that if SAHA secured an AHP loan for the Project, the purchase price for the Project site would be \$500 (subject to Council's approval of that price in the DDA). This commitment amounts to an additional City contribution of approximately \$1,459,500, given the site's appraised value of \$1.46 million. As stated previously, SAHA secured its AHP commitment, awarded by the Federal Home Loan Bank on August 2, 2013, thus triggering the \$500 purchase price.

The City's approval of alternate HTF reservations that would go into effect if SAHA fails to secure Harper Crossing's additional, requisite funding includes the following projects and values:

UA Homes Apartments	\$400,000
UA Cooperative Housing	\$275,000
Wm. Byron Rumford Plaza	\$300,000
Strawberry Creek Lodge	\$560,000

Northern California Land Trust	\$249,000
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The purpose of approving these funds as back-up commitments is to ensure that the City remain in compliance with HUD requirements regarding the timely use of HOME funds. Should these alternate HTF Reservations become active, staff will return to Council with additional project approval requests.

CURRENT SITUATION AND ITS EFFECTS

The small size of the Project site and the repeated reductions in available affordable housing funding sources over the past several years have made the site's development extremely challenging. SAHA's response to the City's January 2012 Request for Proposals ("RFP") for development of the site was thorough and well-conceived, and, like all affordable housing developments, relied on gap funding. An allocation of PBVs was, at that time, a reasonable assumption, and PBVs made an allocation of 9% low-income housing tax credits a reasonable assumption as well. The automatic federal funding cuts imposed in 2013 ("Sequestration") reduced the Berkeley Housing Authority's ability to allocate PBVs, however, which then made a competitive 9% tax credit application impossible. No other public funding source was available to fill the gap left by the lack of PBVs in time for a 2013 tax credit application.

Fortunately, new and unexpected funding opportunities subsequently emerged at the State this year through a reallocation of certain housing proceeds. Applications for HCD's IIG and TOD financing were due in August. SAHA succeeded in securing these highly competitive funds as follows: \$578,800 in IIG and \$2,467,000 in TOD financing. This infusion of new gap funding provides a very strong chance that SAHAD can finally secure 9% tax credits.

Despite the competitiveness of the pending Harper Crossings application for 9% tax credits, it must be noted that success in the application process is not guaranteed. For this reason, staff recommends extending the deadline for approvals of the alternate HTF Reservations described above.

BACKGROUND

The Project's development timeline to date is as follows:

- January 2012: City issued development Request for Proposals ("RFP")
- July 2012: Council conditionally approved Satellite Housing as site developer (Resolution No. 65,807-N.S.)
- December 2012: Satellite Housing and Affordable Housing Associates merged organizations to form Satellite Affordable Housing Associates ("SAHA")

- December 2012: Council approved \$2.3 million HTF Reservation for Harper Crossings, conditioned on SAHA securing other requisite funding by 12/31/13
- December 2012: Council approved alternate set of HTF Reservations, as back-up HOME commitments should SAHA fail to secure Project funding by 12/31/13
- February 2013: Council approved Option Agreement with SAHA related to the purchase and development of the Project site (Ordinance No. 7,279-N.S.), with an automatic termination provision if SAHAD and City have not executed a DDA by 12/31/13
- April 2013: Berkeley Housing Authority (“BHA”) notified City that Sequestration has disrupted plans for PBV issuance; loss of PBVs renders Project financially infeasible under existing assumptions
- August 2013: SAHA secured \$615,000 in AHP funds
- August 2013: SAHA applied for IIG and TOD funding from HCD
- November 2013: SAHA received preliminary award notices for \$3 million in IIG and TOD funds, creating 9% tax credit application competitiveness

RATIONALE FOR RECOMMENDATION

Because HCD does not expect to hold IIG or TOD funding rounds in 2014, and no other new, substantial funding opportunities appear likely within the next year, SAHA’s 2014 application for 9% tax credits provides the most promising development program available for the Project site. Extension of the Option and HTF Reservation will enable pursuit of this important opportunity.

ALTERNATIVE ACTIONS CONSIDERED

If Council does not approve the new Option and HTF Reservation extension, SAHA’s conditional rights to purchase the site and develop the Project will expire. Council’s options in that scenario include 1) a sale of the site for market-rate/commercial development; 2) lease of the site for some use yet to be identified; 3) land-banking of the site. The financial impact and implications for the community related to each of these options would require further research and reporting back to Council.

HOUSING ADVISORY COMMISSION ACTION

At its regularly scheduled meeting of November 7, 2013, the HAC passed a motion recommending Council’s approval of the extensions requested and also recommending to Council that the City retain 3135 Harper for affordable housing should SAHA fail to secure the requisite funding to build the Project. M/S/C: Feller/Soto-Vigil. Ayes: Feller, Soto-Vigil, Skjerping, Tregub, Darrow, Droste, Wolfe. Absent for vote: Casalaina. Noes: None. Abstentions: None.

CONTACT PERSON

Kate Hartley, Sr. Community Development Project Coordinator, HH&CS (510) 981-5411

Attachments:

1: Resolution

Exhibit A: Legal Description of Property

Exhibit B: Second Option Agreement

RESOLUTION NO. ##,###-N.S.

APPROVAL OF SECOND OPTION AGREEMENT AND EXTENSION OF HOUSING TRUST FUND RESERVATION FOR 3135 HARPER STREET; EXTENSION OF APPROVAL DATE FOR ALTERNATE HTF RESERVATIONS

WHEREAS, the City Council established a Housing Trust Fund (HTF) Program to assist in the development and preservation of affordable housing for low- and moderate-income households in order to maintain and enhance the ethnic and economic diversity of the City; and

WHEREAS, the HTF Program addresses the substantial need for affordable and special needs housing documented in the City's General Plan, Housing Element, and Consolidated Plan; and

WHEREAS, on July 10, 2012, the City Council selected Satellite Affordable Housing Associates ("SAHA", as successor to Satellite Housing) in a competitive process as the preferred affordable housing developer for 3135 Harper Street (Resolution No. 65,807-N.S.); and

WHEREAS, on December 11, 2012, the City Council approved a \$2.3 million HTF reservation for SAHA's development of 3135 Harper Street ("Harper Crossings"), contingent upon SAHA's securing all required funding for the project by December 31, 2013 (Resolution No. 65,962-N.S.); and

WHEREAS, the Harper Crossings HTF reservation included HOME funding from the U.S. Department of Housing and Urban Development ("HUD"), and in order to remain in compliance with HUD funding commitment requirements should SAHA fail to meet its HTF obligations, the City Council identified alternate projects to which such funds could be disbursed (Resolution No. 65,962-N.S.); and

WHEREAS, on February 5, 2013, the City Council approved an Option Agreement with Satellite AHA Development, Inc. (the development affiliate of SAHA; (Ordinance No. 7,279-N.S.), which conferred certain rights related to the purchase and development of 3135 Harper Street; and

WHEREAS, SAHA has worked diligently to meet its Option Agreement and HTF Reservation milestones but requires a deadline extension due to adverse impacts caused by automatic federal funding cuts in 2013; and

WHEREAS, the extension of HTF and Option Agreement deadlines will enable SAHA to leverage approximately \$3.6 million in competitive awards it secured in November 2013 and submit a competitive 9% low-income housing tax credit application on March 5, 2014.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley approves a Second Option Agreement with Satellite Affordable Housing Development

Associates, Inc., regarding 3135 Harper Street, conferring certain rights regarding the disposition and development of the property.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley extends the termination date of the HTF Reservation awarded for Harper Crossings by Resolution No. 65,962-N.S, from December 31, 2013 to June 30, 2014.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley extends the date by which the alternate HTF Reservations identified in Resolution No. 65,962-N.S. are approved if SAHA fails to secure a tax credit allocation for Harper Crossings from December 31, 2013 to June 30, 2014. The alternate HTF Reservations are as follows:

- Resources for Community Development, for UA Homes: up to a maximum of \$400,000 for additional life safety rehabilitation;
- Resources for Community Development, for UA Cooperative Housing: up to a maximum of \$275,000 for energy efficiency, accessibility and life safety work;
- Resources for Community Development, for William Byron Rumford Sr. Plaza: up to \$300,000 for upgrades to amenities in shared common space, including play equipment, and increase construction contingency funding;
- SAHA, for Strawberry Creek Lodge: up to \$560,000 to fill a financing gap and complete the needed renovation of the units in the senior residential buildings; and
- Northern California Land Trust: up to \$249,000 for energy upgrades, roof repairs, and window replacements on four scattered sites.

BE IT FURTHER RESOLVED that all funding reservations are conditioned upon the completion of the environmental review process, except as authorized by 24 CFR, Part 58, and that should HOME and/or CDBG funds constitute a portion of the funding for any project, a final commitment of HOME and/or CDBG funds shall occur only upon the satisfactory completion of the appropriate level of environmental review and also upon the receipt of approval of the request for release of funds and related certification from the U.S. Department of Housing and Urban Development, when applicable. The funding reservation for any of the HOME and/or CDBG funded projects is conditioned upon the City of Berkeley's determination to proceed with, modify, or cancel the project based on the results of subsequent environmental review under the National Environmental Policy Act.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements and any amendments will be kept on file in the Office of City Clerk.

Exhibits

A: Legal Description of Property

B: Second Option Agreement

Legal Description of Property

The land referred to is situated in the County of Alameda, City of Berkeley, State of California and is described as follows:

Beginning at the intersection between the northerly boundary of Fairview Street with the easterly boundary of Harper Street as said streets are shown upon Map of the Werner Tract filed May 8th, 1893, in Book 14 of Maps, Page 11 Alameda County Records; thence northerly along the easterly boundary of said Harper Street with bearing North 5° 00' 00" West, a distance of 113.36 feet to the true point of beginning; thence, northerly along said boundary line North 5° 00' 00" West, a distance of 89.0 feet to a point on the easterly boundary of Harper Street; thence, North 80° 30' 00" East, a distance of 163.88 feet to a point on the Westerly boundary of Martin Luther King Junior Way (formerly Grove Street) as shown in the Deed of Extension of Grove Street recorded July 6th, 1896, in Deed Book 589, Page 267, Alameda County Records; thence, Southerly along said boundary South 5° 00' 00" East, a distance of 89.0 feet; thence South 80° 30' 00" West, 163.88 feet to the true point of beginning.

Assessor's Parcel No: 052-1551-013

SECOND OPTION AGREEMENT

3135 HARPER STREET, BERKELEY, CA

This Option Agreement (the "Agreement") is entered into as of this ____ day of _____, 2013 (the "Agreement Date"), by and between Satellite AHA Development, Inc., a California nonprofit public benefit corporation (the "Buyer" or "Developer") and the City of Berkeley, a municipal corporation (the "Seller" and the "City").

RECITALS

A. The Seller owns certain real property located at 3135 Harper Street (the "Property"). The Property is more particularly described in the legal description attached hereto as Exhibit A, which is incorporated herein by this reference.

B. The City desires to cause development of affordable housing on the Property consisting of: a four-story building of approximately forty-two thousand three hundred (42,300) square feet, comprised of (i) forty-two (42) one-bedroom senior rental units, forty-one (41) of which shall be affordable to households earning less than 60% of area median income, and one property manager's unit; (ii) nine (9) covered parking spaces; and (iii) ground floor common areas, including a community room and lobby ("Development"). The Development shall be generally consistent with the City-issued Request for Proposals ("RFP") dated January 2012, and Buyer's March, 29, 2012 RFP submittal, a copy of which is attached to this Agreement as Exhibit B (the "Proposal") for Harper Crossings.

C. On July 10, 2012, the City Council adopted Resolution 65,807-N.S., conditionally approving the selection of Buyer as the Property developer, pursuant to the goals of the RFP and the Proposal.

D. On September 27, 2012, the City and Buyer entered into an Exclusive Negotiating Rights Agreement (the "ENRA") for the Option to Purchase Agreement.

E. On December 11, 2012, Council adopted a Resolution approving a Housing Trust Fund (HTF) reservation of \$2,300,000 for the development of the Property by Buyer ("HTF Funding").

F. The purpose of this Agreement is to grant to Buyer an option to purchase the Property conditioned upon execution of a Disposition and Development Agreement (the "DDA") by Buyer and Seller prior to expiration of the Option Term. Among other matters, the DDA shall address the conditions in which: (1) the City would convey the Property to the Buyer at a purchase price that would enable a financially feasible Development; and (2) the Buyer would develop and operate the Development on the conveyed Property. As more fully set forth in Section 3.1 below, the Buyer acknowledges and agrees that this Agreement in itself does not obligate any party to acquire or convey any property, does not grant the Buyer the right to develop the

Development, and does not obligate the Buyer to any activities or costs to develop the Development, except for the analysis and negotiations contemplated by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Buyer and Seller (each a "Party" and collectively the "Parties") mutually agree as follows:

ARTICLE 1. OPTION TO PURCHASE

Section 1.1 Good Faith Negotiations. During the Option Term (defined in Section 1.3 below), the Parties shall diligently and in good faith undertake the specific tasks set forth in Article 2, with the goal of evaluating the Development's financial and development feasibility and commencing negotiations that result in a mutually satisfactory DDA. The Proposal shall serve as a guide in the evaluation and negotiations of the DDA, although the Parties acknowledge that review of additional information and further discussion may lead to refinement and revision of the development concepts set forth in the Proposal.

The City and Buyer agree that, in light of Buyer's award of a Six Hundred Fifteen Thousand Dollar (\$615,000) Affordable Housing Program (AHP) conditional award from the Federal Home Loan Bank on August 2, 2013, the DDA shall memorialize a purchase price for the Property of five hundred dollars (\$500), subject to the approval of the Berkeley City Council, as stipulated in Section 3.1 of this Agreement (the "Purchase Price"), and subject further to Buyer's satisfaction of all conditions necessary to close the AHP funding.

As additional consideration for the conveyance of the Property and the HTF Funding, Buyer agrees that (i) the City shall transfer and Buyer shall purchase the Property in "as-is" condition; (ii) Buyer shall secure all necessary use and building permits for construction of the Development; (iii) Buyer shall secure all required environmental reviews and approvals for the proposed Development; (iv) Buyer shall construct the Development; (v) Buyer shall operate and maintain the Development as affordable senior rental housing for a minimum of 55 years from the date of the Development's completion.

Section 1.2 Exclusive Option. Seller hereby grants to Buyer an exclusive option (the "Option") to purchase the Property conditioned upon execution by the Parties of a mutually acceptable DDA prior to the Option Term Expiration Date as set forth in Section 1.3 below.

Section 1.3 Option Term. The rights conferred upon Buyer shall be for a term (the "Option Term") commencing on the Agreement Date and automatically terminating

without any further action of either Party hereto, at five o'clock p.m. (5:00 p.m.) on June 30, 2014 (the "Option Term Expiration Date").

If a DDA has not been executed by the City and Buyer by the Option Term Expiration Date, then this Agreement shall automatically terminate and neither Party shall have any further rights or obligations under this Agreement. If a DDA is executed by the City and the Buyer by the Option Term Expiration Date then, upon such execution, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

Section 1.4 Option Payment. In consideration for the grant of the Option, concurrently with Buyer's execution of this Agreement, Buyer shall pay to Seller the sum of One Hundred Dollars (\$100.00) (the "Option Payment"), which amount shall be nonrefundable to Buyer and applicable to the Purchase Price. Seller acknowledges receipt of the Option Payment on _____, 2013.

Section 1.5 Exercise of Option. Buyer shall exercise the Option, if at all, no later than the Option Term Expiration Date. Buyer shall exercise the Option by Buyer's delivery of written notice to Seller delivered in accordance with Section 3.2. Such notice shall be in the form of a letter from Buyer to Seller stating that Buyer is exercising Option under this Agreement. The date of Buyer's written notice shall be the "Option Exercise Date."

Section 1.6 Identification of Developer's Representatives. The Buyer's representatives to negotiate the DDA with the City are Susan Friedland, Eve Stewart, and _____, as well as Buyer's attorneys, Gubb & Barshay, LLP.

ARTICLE 2. NEGOTIATION TASKS

Section 2.1 Overview. To facilitate negotiation of the DDA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the Option Term Expiration Date.

Section 2.2 Inter-Developer Relationship. Within thirty (30) days after the Agreement Date, Buyer shall prepare and submit to the City a proposal outlining its proposed ownership structure for the Development and the Property pursuant to the requirements of low-income housing tax credit financing.

Section 2.3 Financing and Costs of Development. Buyer shall provide updated financial projections (including sources and uses budgets, tax credit computations, 9% tax-credit "tie-breaker" computations, tenant rent tables, an operating budget, a 20-year cash flow, and any other financial information reasonably requested by the City), immediately upon Buyer's receipt of commitment information related to non-City funding for the Development. City shall rely on such updated financial projections in order to

evaluate the Development's feasibility and whether to enter into DDA negotiations with Buyer.

Section 2.4 Due Diligence. In addition to submitting financial projections to City, Buyer shall submit for City's review during the Option Term an updated appraisal and market study. The City may also require the following: soils report, hazardous materials report, survey, and, if needed, updated testing of the Property to determine actual property lines and title adequacy. Such activities shall be conducted in accordance with the right of entry described in Section 3.4.

(a) Physical Adequacy Determination. In compliance with Section 2.4(a) of the ENRA, Buyer has conducted a physical adequacy determination and the Property is now deemed physically suitable for development of the Development. Buyer is now prohibited from terminating the Option as a result of the purported physical unsuitability of the Property (unless such unsuitability arises solely from an event occurring subsequent to the execution of the Option).

(b) Title Adequacy Determination. Pursuant to Section 2.4(b) of the ENRA, title to the Property is deemed adequate by Buyer.

(c) Delinquent Tax Lien. The Property has been declared tax defaulted for nonpayment of delinquent taxes for the fiscal year 2007 and subsequent delinquencies (Default No. 681465). Notwithstanding anything to the contrary in Subsection (b), the City shall ensure, at its sole cost, that such lien and the obligation to pay any amounts related to such lien, shall be removed of record prior to the disposition of the Property pursuant to the DDA.

Section 2.5 Reports. Unless otherwise waived by the City, Buyer shall provide the City with copies of all reports, studies, analyses, correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the Buyer with respect to this Agreement and the Development, promptly upon their completion.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Buyer acknowledges that the City will need sufficient, detailed information about the proposed Development (including, without limitation the financial information described in Section 2.3) to make informed decisions about the content and approval of the DDA. The City will work with Buyer to maintain the confidentiality of proprietary information subject to the requirements imposed on the City by the Public Records Act (Government Code Section 6253 et seq.). The Buyer acknowledges that the City may share information provided by the Buyer of a financial and potential proprietary nature with third party consultants and City councilmembers as part of the negotiation and decision making process.

The City shall provide the Buyer with copies of all reports, studies, analyses, correspondence and similar documents (collectively, "Documents"), including detailed

property appraisals, prepared or commissioned by the City with respect to this Agreement and the Development, promptly following execution of this Agreement with respect to Documents then in its possession or under its reasonable control, and promptly upon their completion with respect to any subsequently prepared Documents.

Section 2.6 Organizational Documents. The Buyer shall provide the City with a copy of its organizational documents, fully executed by the Buyer's members or applicable officer(s), evidencing that the Buyer exists and is in good standing to perform its obligations under the DDA, within thirty (30) days following the Agreement Date.

Section 2.7 Progress Reports. From time to time as reasonably agreed upon by the Parties, each Party shall make oral or written progress reports advising the other Party on studies being made and matters being evaluated by the reporting Party with respect to this Agreement and the Development.

ARTICLE 3. GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate either the City or the Buyer to enter into a DDA or to enter into any particular DDA. By execution of this Agreement, the City is committing itself to transfer the Property only upon the occurrence of following two events: (1) execution of a mutually acceptable DDA by the Parties prior to the Option Term Expiration Date; and (2) Buyer exercising the Option prior to the Option Term Expiration Date. The City reserves for subsequent City and City Council action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the City Council following conduct of all legally required procedures, and executed by duly authorized representatives of the City and the Buyer. Until and unless a DDA is signed by the Buyer, approved by the City Council, and executed by the City, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document.

Section 3.2 Notices. Formal notices, demands and communications between the City and the Buyer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service or by electronic mail, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time, provided that any notice, request, demand, direction or other communication sent by electronic mail must be confirmed by letter mailed or delivered within two (2) business days of such electronic mail notice in accordance with any other delivery method described in this section:

City: City of Berkeley, Health, Housing & Community Services Department
2180 Milvia Street, 2nd Floor
Berkeley, CA 94704
Attn: Jane Micallef
Email: jmicallef@cityofberkeley.info

With a copy to: City Attorney's Office
2180 Milvia Street, 4th Floor
Berkeley, CA 94704
Attn: City Attorney
Email: attorney@cityofberkeley.info

Buyer: Satellite AHA Development, Inc.
1521 University Avenue
Berkeley, CA 94703
Attn: Executive Director
Email: Sfriedland@sahahomes.org

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 3.3 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Right of Entry. As of the Effective Date, the City grants the Buyer the right to enter upon the Property, as necessary, for purposes of conducting investigations to further the objectives of this Agreement.

Section 3.5 Costs and Expenses. Each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each Party's obligations under this Agreement.

Section 3.6 No Commissions. Except as may otherwise be provided in any DDA hereafter executed by the City, the City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA resulting from this Agreement. The City represents that it has engaged no broker, agent or finder in connection with this transaction, and the Buyer shall defend and hold the City harmless from any claims by any broker, agent or finder retained by the Buyer.

Section 3.7 Defaults and Remedies.

(a) Default. Failure by any Party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured fifteen (15) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the City, the Buyer's sole remedies shall be to terminate this Agreement. Following such termination, no Party shall have any further right, remedy or obligation under this Agreement, except that the Buyer's indemnification obligation pursuant to Section 3.6 shall survive such termination.

In the event of an uncured default by the Buyer, the City's sole remedy shall be to terminate this Agreement. Following such termination, no Party shall have any right, remedy or obligation under this Agreement, except that the Buyer's indemnification obligation pursuant to Section 3.6 shall survive such termination.

Except as expressly provided above, no Party shall have any liability to any other Party for damages or otherwise for any default, nor shall any Party have any other claims with respect to performance under this Agreement. Each Party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.

Section 3.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 3.9 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the subject matters of this Agreement.

Section 3.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 3.11 Assignment. The Buyer may not transfer or assign any or all of their rights or obligations hereunder except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void.

Section 3.12 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and the Buyer and no other person shall have any right of action under or by reason of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, by the Parties on the date first above written.

DEVELOPER:

Satellite AHA Development, Inc., a California nonprofit corporation

By: _____

Name: _____

Its: _____

CITY:

CITY OF BERKELEY, a municipal corporation

Approved as to form:

City Attorney

By: _____

Name: _____

Its: _____

EXHIBIT A

Legal Description of Property

The land referred to is situated in the County of Alameda, City of Berkeley, State of California and is described as follows:

Beginning at the intersection between the northerly boundary of Fairview Street with the easterly boundary of Harper Street as said streets are shown upon Map of the Werner Tract filed May 8th, 1893, in Book 14 of Maps, Page 11 Alameda County Records; thence northerly along the easterly boundary of said Harper Street with bearing North 5° 00' 00" West, a distance of 113.36 feet to the true point of beginning; thence, northerly along said boundary line North 5° 00' 00" West, a distance of 89.0 feet to a point on the easterly boundary of Harper Street; thence, North 80° 30' 00" East, a distance of 163.88 feet to a point on the Westerly boundary of Martin Luther King Junior Way (formerly Grove Street) as shown in the Deed of Extension of Grove Street recorded July 6th, 1896, in Deed Book 589, Page 267, Alameda County Records; thence, Southerly along said boundary South 5° 00' 00" East, a distance of 89.0 feet; thence South 80° 30' 00" West, 163.88 feet to the true point of beginning.

Assessor's Parcel No: 052-1551-013

EXHIBIT B
PROPOSAL