

OPTION TO PURCHASE
(Rodeo Senior Housing)

This Option to Purchase ("Agreement") is dated November 1, 2020, and is by and between the County of Contra Costa, a political subdivision of the State of California (the "County"), and EAH, Inc., a California nonprofit public benefit corporation ("Optionee").

RECITALS

A. The County, in its capacity as housing successor to the Contra Costa County Redevelopment Agency, is the owner of approximately 0.98 acres of real property located near Willow Avenue and San Pablo Avenue in Rodeo, California, having Assessor's Parcel Number 357-120-074, as more particularly described in Exhibit A (the "Property").

B. Because the Property is a housing asset of the former Redevelopment Agency, its disposition is governed by the County, in its capacity as housing successor, and is subject to the requirements of Health and Safety Code Section 34176.

C. The County and Optionee entered into an Exclusive Negotiating Rights Agreement dated November 12, 2019 (the "ENRA"), pursuant to which the County and Optionee agreed to negotiate in good faith the terms of a Disposition and Development Agreement (the "DDA") regarding the development of the Property.

D. Optionee desires to develop the Property with approximately 67 units of housing for low income seniors and related community services (the "Project").

E. In order to apply for Project financing, Optionee desires to obtain from the County, and the County desires to grant to Optionee, upon the specific terms and conditions set forth in this Agreement, the exclusive right and option to purchase the Property.

F. During the term of this Agreement the County and Optionee will continue to negotiate the terms of the DDA.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

Section 1. Grant of Option. the County grants to Optionee the option to purchase the Property for the purpose of constructing, developing and operating the Project, and for the consideration and under the terms and conditions set forth in this Agreement, the ENRA and the DDA (the "Option").

Section 2. Term of Option: Exercise.

a. Term and Extension of Term. The term of the Option (the "Term") commences on the date of this Agreement and ends on the earliest to occur of: (i) November 1, 2021 (as such date may be extended below), (ii) the execution of the DDA, and (iii) the

occurrence of a Default Termination (as defined in Section 11 below). So long as the Optionee is not then in default under this Agreement or any other agreements with the County, Optionee may request an extension of the Term to enable the Option to be coterminous with the ENRA.

b. Expiration.

i. The Option will automatically expire at midnight on the last day of the Term. If the expiration of the Term falls on a Saturday, Sunday or legal holiday in the State of California, then the Option may be exercised on the next following business day.

ii. During the Term the ENRA will remain in full force and effect unless terminated by its terms. In the event that the ENRA is terminated and is not superseded by a DDA, this Agreement will automatically terminate

iii. If the parties enter into a DDA, this Agreement will automatically terminate and the purchase of the Property will be governed solely by the terms of the DDA.

iv. Upon termination of the Option and a written request by the County, Optionee shall sign and deliver a quitclaim deed or such other document as may be reasonably required by the County to evidence the termination of the Option.

c. Exercise of Option. At any time before the expiration of the Term, subject to the Exercise Conditions defined in Section 4 below, and so long as Optionee is not then in default under this Agreement or any other agreements with the County, Optionee may exercise the Option by giving written notice to the County (the "Option Notice"). The Option Notice shall specify a date for closing which shall be at least sixty (60) calendar days after the date of the Option Notice, or such additional time as may be mutually agreed to by the parties.

Section 3. Option Consideration. Concurrently with the execution of this Agreement, Optionee shall pay and deliver to the County the sum of Ten Dollars (\$10.00) as separate and independent consideration ("Independent Consideration") for the County's execution of this Agreement and agreement to grant the Option on and subject to the terms and conditions of this Agreement. The Independent Consideration is non-refundable to Optionee in the event this Agreement terminates prior to Optionee's exercise of the Option and shall not be credited towards any amount owed by Optionee to the County in connection with the acquisition of the Property and development of the Project.

Section 4. Conditions Precedent to Exercise of Option. Optionee's right to exercise the Option pursuant to Section 2 above is expressly subject to Section 5 below and the satisfaction of the following conditions precedent (the "Exercise Conditions"). The Exercise Conditions are for the sole and exclusive benefit of the County, and may not be waived, amended, or otherwise modified except by the County

a. Optionee and the County have executed the DDA and all other implementing documents, consistent with the terms and conditions of this Agreement.

b. Optionee shall have obtained all governmental permits and approvals necessary for conveyance of the Property and construction of the Project, including without limitation, building permits and approval of the County Board of Supervisions pursuant to Health and Safety Code Section 33433.

c. Optionee shall have secured all financing necessary for the construction of the Project as determined by the County.

d. Optionee shall have obtained the County's approval of all final construction plans and specifications and the construction contract for the Project.

e. All applicable environmental review have been completed, including but not limited to review under the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"), if applicable.

If the Exercise Conditions have not occurred by the expiration of the Term, the County may terminate this Agreement, and neither party shall have any further rights or obligations hereunder.

Section 5. Environmental Review. Optionee acknowledges that the environmental review process under CEQA may involve preparation and consideration of additional information, as well as consideration of input from interested organizations and individuals; that approval or disapproval of the Project following completion of the environmental review process is within the sole, complete, unfettered, and absolute discretion of the County without limitation by or consideration of the terms of this Agreement and that the County makes no representation regarding the ability or willingness of the County to approve the Project at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be granted. The County retains the absolute sole discretion to (i) modify the Project as may be necessary to comply with CEQA and modifications that are necessary to mitigate impacts of the Project, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Project against any significant environmental impacts prior to taking final action, if such significant impacts cannot otherwise be avoided, (iv) determine not to proceed with the Project, or (v) modify the project for consistency with adopted County plans. The Optionee recognizes that, as a result of the environmental review process, the County has the absolute discretion and right to terminate this Agreement, and no cost shall be incurred by the County as a result of such termination. In addition, Optionee acknowledges that any required approvals by any other local, state or federal agency may require additional environmental review, and that any approval by the County may not bind any other local, state or federal agency to approve the Project. If the County approves the Project following completion of the environmental review process and such approval is conditioned upon implementation of specified environmental mitigation measures, Optionee shall be responsible for implementing such mitigation measures as part of the Project.

Section 6. Terms of the DDA. During the Term, Optionee and the County shall negotiate in good faith to complete all of the terms and conditions of the DDA pursuant to the ENRA. The County shall prepare the DDA. The DDA shall not be effective until the date on

which the County has obtained the necessary approvals to enter into the DDA. The DDA will include the following terms:

a. Purchase Price. The purchase price for the Property (the "Purchase Price") will be Nine Hundred Eighty Thousand Dollars (\$980,000) which is the fair market value of the Property as determined by an appraisal, subject to change based on any appraisal updates and as permitted by the California Tax Credit Allocation Committee.

b. Transfer of the Property. The Property will be transferred in an as-is condition with no warranties or representations from the County concerning the condition of the Property.

c. County Financing. The County shall provide seller carry back financing to Optionee in the amount of the Purchase Price.

d. Predevelopment Obligations. Optionee will be required to perform the predevelopment obligations, including (i) securing financing for construction and operation of the Project, (ii) obtaining all Project land use approvals and entitlements, and (iii) completing architectural and construction plans.

e. Construction of the Project. Optionee will be required to construct the Project in compliance with all applicable laws, codes (including building codes and codes applicable to mitigation of disasters, such as earthquakes), ordinances, rules and regulations of federal, state, county or municipal governments or agencies, and in compliance with specific County requirements including but not limited to those pertaining to accessibility, equal opportunity, and the payment of prevailing wages.

f. Project Use. Optionee will be required to use the Property only for the construction, development, and operation of the Project and such other uses as are reasonably and customarily attendant to such uses. The County will record a regulatory agreement upon the sale of the Property requiring the Project to be operated for affordable housing purposes.

Section 7. Closing.

a. Purchase of the Property. The County shall sell the Property to Optionee, and Optionee shall purchase the Property from the County for the Purchase Price.

b. Payment of Purchase Price. Optionee shall pay the purchase price r by execution of a promissory note by Optionee to the County, payable from residual receipts of the Project.

c. Execution of Documents. The County shall execute a grant deed (the "Deed"), a memorandum of the DDA, and a regulatory agreement all of which will be recorded against the Property in the real property records of Contra Costa County, California.

d. Expenses. All expenses, fees or costs (except attorneys' fees and costs) incurred in close of escrow, including but not limited to city and county documentary transfer

tax, conveyance taxes, recording charges for the Deed (if any), and costs of title insurance will be borne by the Optionee. Each party shall bear its own attorneys' fees and costs.

Section 8. Right to Enter. During the Term, Optionee will have the right to enter the Property in accordance with the permission granted by the County in the ENRA.

Section 9. Permits and Approvals. During the Term, Optionee may meet with all city, County, and other governmental entities to discuss matters relating to the Project. The County agrees to cooperate with Optionee in any such matters and execute any and all documents or join in any applications that may be required to obtain approval of the proposed development of the Property by any other agency having jurisdiction. Optionee shall bear all costs related to seeking approvals for the Project.

Section 10. Notices. Optionee shall promptly notify the County in writing of any and all of the following:

- a. Any litigation known to Optionee materially affecting Optionee, and of any claims or disputes that involve a material risk of litigation;
- b. Any material adverse change in Optionee's financial condition, any material adverse change in Optionee's operations, or any change in the management of Optionee; and
- c. Any other circumstance, event, or occurrence that results in a material adverse change in Optionee's ability to timely perform any of its obligations under this Agreement.

Section 11. Default and Termination. In the event: (i) of a breach or violation of any of the obligations of Optionee under this Agreement, which violation is not cured within ten (10) days after delivery of written notice thereof by the County to Optionee; or (ii) that Optionee is in default under any other agreement with the County pertaining to the Project or Property (including the ENRA), and such event of default remains uncured after passage of the applicable notice and cure period then, in addition to any other rights and remedies it may have at law or in equity, the County may terminate this Agreement (a "Default Termination"). The County may terminate this Agreement due to a Default Termination by delivering a termination notice in writing to Optionee after the expiration of the cure period described above. Upon the date of delivery of such termination notice to Optionee, this Agreement will be terminated, and neither party will have any further rights or obligations under this Agreement except those that expressly survive termination.

Section 12. Notices and Communications. All notices or other communications made pursuant to this Agreement must be in writing and will be deemed properly delivered, given or served to the parties at the following addresses when (i) mailed by certified mail, postage prepaid, return receipt requested, (ii) sent by express delivery service, charges prepaid with a delivery receipt, or (iii) personally delivered when a delivery receipt is obtained.

County: County of Contra Costa
Department of Conservation and Development

30 Muir Road
Martinez, CA 94553
Attention: Deputy Director

Optionee: EAH, Inc.
22 Pelican Way
San Rafael, CA 94901
Attn: President

All notices so delivered, mailed or sent will be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the notice was returned as undeliverable. Either party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other party in the manner provided in this Section 12.

Section 13. Nondiscrimination. Optionee covenants by and for itself and its successors and assigns that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, age, familial status (except for lawful senior housing in accordance with state and federal law), or disability, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor may Optionee or any person claiming under or through Optionee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

Section 14. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

Section 15. Discretion Retained By County. The County's execution of this Agreement in no way limits any discretion the County may have in the permit and approval process related to the construction of the Project.

Section 16. Waivers. Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Optionee or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Optionee to perform any obligation under this Agreement does not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Optionee may not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 17. Indemnification. Optionee shall indemnify, defend and hold the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) that arise out of or in connection with this Agreement, including but not limited to the purchase of the Property and the development, construction, marketing and operation of the Project, except to the

extent such claim arises from the gross negligence or willful misconduct of the County, its agents, and its employees. This obligation to indemnify survives termination of this Agreement.

Section 18. Assignment of Option. Optionee may not assign its rights and/or obligations under this Agreement without the prior written consent of the County.

Section 19. Binding Effect. This Agreement and its terms and conditions bind and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

Section 20. Time. Time is of the essence of this Agreement.

Section 21. Further Documents. Upon the reasonable request of the other party, each party will execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to carry out the intent and purpose of this Agreement, including escrow instructions.

Section 22. Recitals; Exhibits. All recitals set forth above and exhibits attached to this Agreement and referred to in this Agreement are incorporated into this Agreement by this reference as though they were fully set forth in this Agreement.

Section 23. Commission. Each party to this Agreement represents to the other party that it has not engaged or used the services of any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of this Agreement.

Section 24. Captions. The captions of the paragraphs of this Agreement are for convenience and reference only, and the words contained in the captions may not be held to explain, modify, amplify or aid in the interpretations, constructions or meaning of the provisions of this Agreement.

Section 25. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 26. Counterparts. This Agreement may be executed in counterparts.

Section 27. Entire Agreement; Signatures. This Agreement and the ENRA contain the entire agreement between the parties with respect to the matters set forth in this Agreement and the ENRA, and supersede all prior agreements between the parties with respect to such matters.

Section 28. Governing Law. This Agreement is governed by the laws of the State of California.

Section 29. Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the County shall be personally liable to the Optionee in the event of any

default or breach of this Agreement by the County, or for any amount that may become due to Optionee or any of its successors in interest.

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IN WITNESS WHEREOF, Optionee and the County are executing this Agreement as of the date first written above.

COUNTY:

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

By: _____
John Kopchik
Director, Department of Conservation and Development

OPTIONEE:

EAH, Inc., a California nonprofit public benefit corporation

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

SHARON L. ANDERSON
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

EXHIBIT A
Property Description