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**Title:** RESOLUTION - Approving the assignment and assumption of Opportunity Builders' HOME Agreement and related documents to Dublin Transit EAH, Inc., amending the Restated and Superseded Promissory Note, converting the Promissory Note, and approving the Subordination Agreement

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Resolution, 2. Exhibit B - Assignment and Assumption Agmt, 3. Exhibit C - Second Amended Restated and Superseded Promissory Note, 4. Exhibit D - Subordination Agreement, 5. Exhibit E - Location Map, 6. Exhibit F - Photographs

Date	Ver.	Action By	Action	Result
3/1/2018	1	City Council	adopted	Pass

**REPORT TO THE CITY COUNCIL**

**March 1, 2018**

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**THROUGH:** KELLI FURTADO, Assistant Director  
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**SUBJECT**

RESOLUTION - Approving the assignment and assumption of Opportunity Builders' HOME Agreement and related documents to Dublin Transit EAH, Inc., amending the Restated and Superseded Promissory Note, converting the Promissory Note, and approving the Subordination Agreement

**RECOMMENDATION**

Staff recommends the City Council adopt a resolution (Exhibit "A" - Resolution) approving the Assignment and Assumption Agreement (Exhibit "B" - Assignment and Assumption Agreement) with

Opportunity Builders and Dublin Transit EAH, Inc. (EAH), second amendment of the Restated and Superseded Promissory Note (Exhibit "C" - Second Amended Restated and Superseded Promissory Note), conversion of the Note, Subordination Agreement (Exhibit "D" - Subordination Agreement) substantially in the form attached, and authorize the City Manager to execute assignment and related documents approved as to form by the City Attorney's Office.

## **EXECUTIVE SUMMARY**

On December 20, 2017, the Housing and Community Development Division received a request from Opportunity Builders to consider an assignment and assumption of its HOME Investment Partnerships (HOME) Program Agreement and related documents to EAH. EAH has proposed to acquire the Village at Kings Canyon Apartments, a 48-unit affordable multifamily rental property in southeast Fresno. If EAH pursues its acquisition of the property as proposed, staff recommends that the City Council approve an Assignment and Assumption of the HOME Agreement, amendment of the Promissory Note, conversion of the Note, and the Subordination Agreement substantially in the form attached.

## **BACKGROUND**

On October 8, 2002, the City Council approved a HOME Agreement with Opportunity Builders for the construction of the Village at Kings Canyon Apartments located at 5015 E. El Monte Way, Fresno, CA 93727 (APN: 472-161-25), 5019 E. Montecito Avenue, Fresno, CA 93727 (APN: 472-161-26) and 962 S. Pierce Avenue, Fresno, CA 93727 (APN: 472-171-03), Exhibit "E" - Location Map. The HOME Agreement provided for a grant and loan not to exceed \$1 million. On May 3, 2005, the City Council approved an additional \$500,000 to the project, which resulted in the project receiving a total of \$1,250,000 (\$500,000 grant and \$750,000 hard-debt loan). The Village at Kings Canyon Apartments Project was successfully completed on January 8, 2007, at a cost of \$6,209,002, slightly above its initially proposed \$5,928,928 budget. Since that time, the property has operated at above average (Exhibit "F" - Photographs) with the City receiving an annual payment of \$19,134.55. Since Opportunity Builders has paid down the \$750,000 HOME loan to \$618,748.84, the Second Amended Restated and Superseded Promissory Note will reflect this current balance.

On March 14, 2017, Eric Kjeldgaard, President of Opportunity Builders, met with Housing and Community Development staff to inform them of the proposed plan to sell, transfer, or assign the property to another affordable housing entity in an effort to generate cash for Opportunity Builders. Mr. Kjeldgaard later followed up with a formal letter of intent to sell/transfer/assign on December 20, 2017, stating that the property was listed for sale. In that same letter, Mr. Kjeldgaard informed staff that he believed EAH had the strongest financial and management capacity to fulfill the obligations of the Purchase and Sale Agreement.

On January 10, 2018, the Housing and Community Development Division received EAH's formal request to assume the HOME Agreement and related documents. Also received were some of the requested preliminary underwriting documents. The City will not execute the Assignment and Assumption Agreement attached as Exhibit "B" until the underwriting of EAH is complete. Although EAH has gone through similar underwriting in the past as part of funding their Arbor Court Apartments project, the City is required to complete underwriting associated with the assignment and assumption as well.

Title to the property will be taken in an affiliated entity wholly owned by EAH called Dublin Transit EAH, Inc. Dublin Transit EAH, Inc. is a 501(c)(3) organized for the purpose of owning real estate

assets controlled by EAH Inc. The signatures of the Opportunity Builders and Dublin Transit EAH Inc. to the Assignment and Assumption Agreement and Amendment of the Restated and Superseded Promissory Note have been signed and delivered to the City to hold in trust, and shall not be deemed delivered or effective until the grant deeds conveying title to the real property have been recorded.

Originally named Ecumenical Association for Housing, EAH was founded in 1968 to address the needs of low-income families and older adults living in Marin, California. The organization has grown to now own and manage over 100 affordable housing properties in California and Hawaii with more than 450 staff and a budget of over \$95 million.

EAH currently owns and manages three affordable rental properties in Fresno: Arbor Court Apartments, a 2005 HOME-funded 28-unit affordable rental housing property for disabled individuals located at 4838 E. Laurel Avenue in south east Fresno; Fountain West Apartments, a 72-unit affordable rental community located at 2530 West Fountain Way in west central Fresno; and Summer Park Apartments, a 248-unit affordable rental property located at 1275 South Winery Avenue in southeast Fresno. All of these properties are well maintained. The Summer Park Apartments are proposed for substantial rehabilitation in the coming year.

## **ENVIRONMENTAL FINDINGS**

This is not a project for CEQA purposes.

## **LOCAL PREFERENCE**

Local preference was not considered because the loan assignment does not include a bid on award of a construction or services contract.

## **FISCAL IMPACT**

The City will continue to receive the annual \$19,134.55 payment over the remaining 38 years on the Note term with the balance due at maturity.

## **APPENDICES**

Exhibit A - Resolution

Exhibit B - Assignment and Assumption Agreement

Exhibit C - Second Amended Restated and Superseded Promissory Note

Exhibit D - Subordination Agreement

Exhibit E - Location Map

Exhibit F - Photographs