

**OPTION AGREEMENT FOR GROUND LEASE
BETWEEN THE CITY OF SAN JOSÉ AND**

(ARYA)

THIS OPTION AGREEMENT FOR GROUND LEASE (this “Agreement”) is dated as of January 15, 2020 (the “**Effective Date**”), by and between THE CITY OF SAN JOSE, a municipal corporation (“**City**”), and _____, a California limited partnership (“**Developer**”).

RECITALS

A. City owns certain real property located at 500 Almaden Boulevard (formerly 226 Balbach Street), in the City of San Jose, County of Santa Clara (the “**County**”), State of California, as more particularly described in the attached **Exhibit A** and incorporated herein by this reference (the “**Property**”).

B. The City Council, after conducting a public hearing as required by Health and Safety Code Section 33433 and making the required findings, has approved this option to lease, the form of the ground lease and the affordability restrictions in substantially final form and has authorized the execution of this option.

C. The City Council has authorized the Director of Housing to grant Developer an option to ground lease the Property for construction and operation of an affordable rental apartment complex (including ancillary facilities) on the Property (“**Improvements**”) in accordance with the terms and conditions contained in this Agreement.

D. The City will record an affordability restriction restricting 85 units to be affordable to low income families at up to 60% of area median income (“**AMI**”) (the “**Fee Restriction**”) on the Property. This option will be subordinate to the Fee Restriction. When the lease is entered into, an additional Leasehold Affordability Restriction will be recorded against the leasehold and may be subordinated to a senior construction loan consistent with City and Department policy and the requirements of California Community Redevelopment Law.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Developer and City hereby agree as follows:

1. Grant of Option; Option Term and Exercise.

(a) Grant of Option. City hereby grants to Developer an exclusive option (the "Option") to ground lease the Property upon the terms and conditions set forth in this Agreement.

(b) Option Period Term; Extension. The term of the Option shall commence on the Effective Date and terminate at 5:00 p.m. on the first 1st anniversary of the Effective Date (the "Option Period"). The City shall extend the term of this Option by up to one year, provided that the City determines, in its reasonable discretion, that Developer has exercised due diligence in advancing the project including submitting qualifying applications for financing in each tax credit application cycle, by execution of a written amendment.

(c) Option Exercise. To exercise the Option, Developer shall execute and deliver a written Notice of Exercise of Option to City at least thirty (30) days prior to expiration of the Option Period ("**Exercise Date**"). Failure to exercise the Option during the Option Period are required shall be deemed a termination of the Option. In the event that the Option is terminated, this Agreement shall be terminated, neither party shall have any further rights or obligations hereunder and the City may rescind the Memorandum of Option.

(d) Memorandum of Option. Substantially concurrently with the execution of this Agreement, Developer and City shall execute and record a Memorandum of this Option Agreement in the form attached here to as **Exhibit B** ("Memorandum of Option").

2. Ground Lease of the Property.

(a) If Developer has exercised the Option pursuant to Section 1, above, City and Developer shall execute a ground lease substantially in the form of the Ground Lease attached as **Exhibit C** and City shall lease the Property subject to the terms and conditions of this Agreement and any subsequent specific lease terms negotiated by the City and Developer.

(b) The ground lease shall have a term of 65 years. It may be extended by up to 20 years pursuant its terms. ground lease. The term of the ground lease may not exceed 85 years. The ground lease term shall begin at or prior to the close of

construction financing. At the end of the term, the property and improvements will revert to ownership by the City. At lease expiration, City may require demolition of the improvements at the expense of the Developer.

(c) The Project will include minimum 65 year leasehold affordability restrictions restricting eleven (11) 0-bedroom (“**studio**”) units, five (5) 1-bedroom units, and two (2) 2-bedroom units all restricted to extremely low income households at 30% of Area Median Income (“AMI”); five (5) studio units, twenty-nine (29) 1-bedroom units, and three (3) 2-bedroom units all restricted to very low income households at 50% of AMI; and three (3) studio units, twenty (20) 1-bedroom units, and seven (7) 2-bedroom units all restricted to low income households at 60% of AMI (collectively, the “Assisted Units”), as such limitations may be adjusted under the Leasehold Affordability Restriction (collectively, the **Project Specific Restrictions**) and 1 unrestricted two-bedroom manager’s unit. The City shall have the right to extend the Project Specific restrictions to match the term of the lease in the event that of the lease is extended beyond the 65 year term. This Section 2 shall survive the Close of Escrow (as defined below) or earlier termination of this Agreement.

3. Title.

(a) Owner’s Title Policy. Prior to Close of Escrow, Title Company shall be in a position to issue, at Developer’s expense, CLTA Owner’s Policy of Title Insurance (the “Owner’s Title Policy”) showing title to the Property vested in City subject to all matters shown on the City’s then existing Title Policy and any other matters approved in writing by City (collectively, “**Approved Exceptions**”).

(b) Leasehold Title Policy. Prior to Close of Escrow, Title Company shall be in a position to issue a 2006 CLTA Coverage Owner’s Policy of Title Insurance (the “Leasehold Title Policy”) showing title to the leasehold vested in Developer as of the Closing Date with liability in an amount as required by Developer subject to all matters shown on the City’s Owner’s Title Policy and any other matters approved in writing by Developer (collectively, “Approved Exceptions”).

4. Escrow and Closing.

(a) Opening of Escrow. Developer has opened an escrow (the “**Escrow**”) with Old Republic Title Company (“**Title Company**” and “**Escrow Holder**”), located at _____, _____, CA. As used in this Agreement, “Closing” or “Close of Escrow” means the concurrent delivery of documents to Escrow Holder, transfer of the leasehold interest to the Property to Developer, recording of the Memorandum of Lease, delivery of the Leasehold Title Policy to Developer and the Owner’s Title Policy to City and the payment of the fixed rent.

(b) Escrow Fees and Other Charges. Developer shall pay any and all costs related to the Closing and Close of Escrow, including, without limitation, (1) the premium cost and any endorsements required, for the Owner’s Title Policy and Leasehold Title Policy (as hereinafter defined), (2) Escrow Holder’s fees, and (3) all City

and County transfer taxes and fees (including, without limitation, documentary transfer taxes). City shall not be responsible for payment of any fees, costs or expenses related to the Closing and/or the Close of Escrow.

(c) Closing Documents. The parties shall deposit the following with Escrow Holder or shall deliver directly to the other party prior to the Closing:

(i) Developer's Deliveries. Developer shall deposit: (a) two (2) executed counterparts of the Ground Lease substantially in the form attached hereto as **Exhibit C** (the "**Ground Lease**"), and (b) one (1) executed counterpart of the Memorandum of Ground Lease substantially in the form attached to the Ground Lease (the "**Memorandum of Ground Lease**").

(ii) City's Deliveries. City shall deposit: (a) two (2) executed counterparts of the Ground Lease and (b) one (1) executed counterpart of the Memorandum of Ground Lease.

(iii) Additional Instruments. City and Developer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to proceed to the Close of Escrow and consummate the lease of the Property in accordance with the terms of this Agreement.

(d) Closing.

(i) Actions by Escrow Holder. On or after the Closing Date, provided each of the conditions to the obligations of the parties have been satisfied or expressly waived in writing, Escrow Holder shall undertake and perform the following acts in the following order:

(1) record the Memorandum of Ground Lease (with documentary transfer tax information to be affixed after recording) in the Official Records and obtain conformed copies thereof for delivery to Developer and City;

(2) deliver to Developer (i) the Leasehold Title Policy, (ii) one (1) original of the Ground Lease, and (iii) a conformed copy of the recorded Memorandum of Ground Lease; and

(3) deliver to City (i) one (1) original of the Ground Lease, (ii) the Owners Title Policy, and (iii) a conformed copy of the recorded Memorandum of Ground Lease.

(ii) Possession; Title. Upon the Closing, leasehold title to the Property shall be conveyed to the Developer subject to the Approved Exceptions and the City's recorded affordability restrictions.

(iii) IRS Form 1099-S. For purposes of complying with Section 6045 of the Internal Revenue Code of 1986, as amended (the "Code"), as amended by Section 1521 of the Code, Escrow Holder shall be deemed the "person responsible

for closing the transaction,” and shall be responsible for obtaining the information necessary to file and shall file within the time specified with the Internal Revenue Service Form 1099-S, “Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions.”

(e) Failure to Close; Termination.

(i) Developer’s Default. In the event of Developer’s default under or breach of this Agreement, City’s sole and exclusive remedy shall be to terminate this Agreement.

(ii) City’s Default. In the event of City’s default under or breach of this Agreement, Developer’s sole and exclusive remedy shall be to terminate this Agreement.

(iii) Cancellation Charges. In the event the failure to close the Escrow is due to the default of one of the parties, the defaulting party shall be solely responsible and liable for paying any Escrow and title cancellation fees and charges.

5. Representations and Warranties.

(a) City’s Representations and Warranties. City represents and warrants to Developer that it is a municipal corporation, and has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by City and, upon delivery to and execution by Developer, shall be a valid and binding agreement of City.

(b) Developer’s Representations and Warranties. Developer represents and warrants to City that it is a California limited partnership, and has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Developer and, upon delivery to and execution by City, shall be a valid and binding agreement of Developer.

6. General Provisions.

(a) Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

(b) Entire Agreement; Amendment. This Agreement (together with the Recitals and all Exhibits attached hereto) contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understanding, oral or written, pertaining to any such matters shall be

effective for any purpose. No provision of this Agreement may be modified, waived, amended or added to except by a writing signed by the party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

(c) Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

(d) Governing Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

(e) Brokers Fee. Developer and City each represents and warrants to the other that it has not engaged any real estate broker or finder in connection with this transaction. City shall indemnify, defend and hold Developer harmless against any and all claims, demands, damages, actions, causes of action, losses, judgments, liabilities, costs and expenses (including, without limitation, attorneys' fees, costs, expenses, disbursements and court costs) (collectively, "Claims") incurred by reason of any brokerage fee, commission or finder's fee which is payable or alleged to be payable to Brokers or any other broker or finder by or on the basis of any alleged acts by City. Developer shall indemnify, defend and hold City harmless against any and all Claims incurred by reason of any brokerage fee, commission or finder's fee which is payable or alleged to be payable to any other broker or finder by or on the basis of any alleged acts by Developer. The representations, warranties, indemnities and agreements contained in this Section shall survive the Close of Escrow or earlier termination of this Agreement.

(f) Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement.

(g) Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. Notwithstanding anything to the contrary set forth herein, each party hereto shall be solely responsible for paying its own attorneys' fees.

(h) Time of the Essence. Time shall be of the essence as to all dates and times of performance.

(i) Notices. All notices required or permitted by this Agreement shall be in writing and may be delivered in person (by hand delivery or professional messenger service) to either party or may be sent by registered or certified mail, with postage prepaid, return receipt requested or delivered by Express Mail of the U.S. Postal Service or Federal Express or any other courier service guaranteeing overnight delivery, charges prepaid, or may be transmitted by facsimile transmission (provided a hard copy of such transmission is thereafter delivered in one of the foregoing prescribed methods) and addressed as follows:

If to City: City of San Jose
200 East Santa Clara Street, 12th Floor
San Jose, California 95113
Attn: Project Development
Re: Arya /Balbach

With a copy to: City of San Jose
200 East Santa Clara Street, 16th Floor
San Jose, California 95113
Attn: Housing Attorney
Re: Arya/Balbach

If to Developer: _____
c/o Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, CA 94703
Attn: Chief Executive Officer
Re: Arya

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges prepaid, to the U.S. Postal Service or private courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon confirmation of transmission thereof. Any notice or other document sent by any other manner shall be effective only upon actual receipt thereof. Any party may change its address by giving notice to the other party as provided herein.

(j) Assignment. Developer shall not assign any of its right, title and interest in and to this Agreement without City's express prior written consent. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties to this Agreement.

(k) Construction of Agreement. The agreements contained herein shall not be construed in favor of or against either party, but shall be construed as if both parties prepared this Agreement.

(l) Covenant of Further Assurances. The parties hereby agree to execute such other documents and perform such other acts as may be necessary or desirable to carry out the purposes of this Agreement, whether before or after Closing.

(m) Gender and Number. Wherever in this Agreement the context so requires, references to the masculine shall be deemed to include the feminine and neuter, and reference to the singular shall be deemed to include the plural.

[SIGNATURES TO APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY:

CITY OF SAN JOSE a municipal corporation

By: _____
Jacky Morales-Ferrand
Director of Housing

Approved as to Form:

By: _____
S. Shasta Greene, Sr. Deputy City Attorney

DEVELOPER:

_____, a California limited partnership

By: Satellite AHA Development, Inc.,
a California nonprofit public benefit corporation

Its: General Partner

By: _____
Susan Friedland,
Chief Executive Officer

:

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

BEGINNING AT THE MOST NORTHERLY POINT OF LOT 27, BLOCK 5, OF RANGE NO. 3 WEST, ACCORDING TO A MAP OF THE PROPERTY OF J. BALBACH, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN BOOK "D" OF MISCELLANEOUS RECORDS, PAGE 622, SAID POINT BEING A POINT IN THE SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET, 50 FEET WIDE) DISTANT 102.80 FEET WESTERLY FROM THE POINT OF INTERSECTION OF SAID SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET) WITH THE WESTERLY LINE OF ALMADEN AVENUE (FORMERLY ORCHARD STREET, 60 FEET WIDE) AND FROM SAID POINT OF BEGINNING RUNNING SOUTHERLY AND PARALLEL WITH SAID LINE OF ALMADEN AVENUE, 156.08 FEET TO THE MOST EASTERLY POINT OF SAID LOT 27; THENCE AT RIGHT ANGLES WESTERLY ALONG THE SOUTH LINE OF SAID LOT 27 AND ITS WESTERLY PROLONGATION 115 FEET, MORE OR LESS, TO A POINT IN A LINE PARALLEL WITH AND 140.00 FEET EAST OF THE WESTERLY LINE OF ALMADEN BOULEVARD (FORMERLY VINE STREET, 60 FEET WIDE); THENCE NORTHERLY ALONG SAID PARALLEL LINE 118.81 FEET, MORE OR LESS, TO A POINT OF CURVATURE OF A 20-FOOT RADIUS CIRCULAR CURVE TO THE RIGHT, THE RADIUS POINT OF SAID CURVE BEING THE INTERSECTION OF A LINE PARALLEL WITH AND 160.00 FEET EAST OF THE WESTERLY LINE OF ALMADEN BOULEVARD (FORMERLY VINE STREET, 60 FEET WIDE) AND A LINE PARALLEL WITH AND 20 FEET SOUTH OF THE SOUTH OF THE SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET); THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 76° 34', MORE OR LESS, AN ARC LENGTH OF 26.73 FEET TO A POINT OF TANGENCY WITH THE SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET); THENCE EASTERLY ALONG THE SOUTHERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET) 102.43 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

APN: 264-31-109

Exhibit A
Arya – 226 Balbach Option Agreement
T-26649.003/ 167862
11/25/2019

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

**EXHIBIT B
MEMORANDUM OF OPTION**

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO,
AND MAIL TAX STATEMENTS TO:

City of San Jose
200 East Santa Clara Street, 13th Floor
San Jose, California 95113
Attn: Housing Department

The undersigned optionee declares:
Documentary Transfer Tax not shown pursuant to Section 11922 of the California
Revenue and Taxation Code

**MEMORANDUM OF OPTION
(Arya)**

THIS MEMORANDUM OF OPTION dated as of _____, 20__ shall provide notice that the **CITY OF SAN JOSE** ("Owner") has pursuant to an unrecorded Option Agreement dated January 15, 2020 (the "Option") granted the **ARYA, L.P.**, a California limited partnership ("Developer") an option to ground lease on the terms and conditions therein, the real property located at 500 Almaden Boulevard (formerly 226 Balbach Street) City of San José, State of California as more particularly described on **Exhibit A** attached hereto ("Property").

This Memorandum of Agreement is being recorded for notice purposes only. Nothing herein shall be deemed to amend, change or modify the terms, covenants and conditions of the Option referred to herein. Reference should be made to said Option, on file with the Department of Housing of the City of San José, for the specific terms and conditions.

This document continues on the following page.

Exhibit B

Arya – 226 Balbach Option Agreement

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

CITY OF SAN JOSE, a municipal corporation

By: _____
Jacky Morales-Ferrand
Director of Housing

Approved as to Form

By: _____
S. Shasta Greene, Sr. Deputy City Attorney

Signatures continue on the following page

Exhibit B

Arva – 226 Balbach Option Agreement

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

_____, a California limited partnership

By: Satellite AHA Development, Inc.,
a California nonprofit public benefit
corporation

Its: General Partner

By: _____
Susan Friedland,
Chief Executive Officer

[SIGNATURES MUST BE NOTARIZED]

Exhibit B

Arva – 226 Balbach Option Agreement

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**EXHIBIT C
GROUND LEASE**

(see separate document to be attached)

Exhibit C

Arva – 226 Balbach Option Agreement

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.