

OPTION TO LEASE AGREEMENT

This Option to Lease Agreement (this "Agreement") is entered into as of this ___ day of December 2021, by and between the BERKELEY UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California ("District") as optionor ("Optionor") and Abode Communities, a California nonprofit public benefit corporation ("Abode"), and Satellite Affordable Housing Associates, a California nonprofit public benefit corporation ("SAHA" and collectively with Abode, "Optionee") as optionee. Optionor and Optionee may be referred to collectively herein as the "Parties."

RECITALS

A. The District owns that certain real property and improvements located at 1701 San Pablo Avenue, Berkeley, CA 94702 upon which it operates adult education and District support facilities, such property legally described in Exhibit A attached hereto and incorporated herein by reference ("Property").

B. District desires to lease the Property for the purpose of constructing and operating a workforce housing development and appurtenant parking improvements which would service primarily income-qualified District employees earning up to 120% area median income ("AMI") in accordance with the provisions of the Teacher Housing Act of 2016, California Health and Safety Code section 53570 et seq., and all other applicable statutes and regulations ("Development") by a tax credit limited partnership in which Optionee (or its affiliate) would have an ownership interest (the "Lessee").

C. To facilitate the development of the Development, Optionee desires to obtain from the District, and District desires to grant to Optionee, upon the specific terms and conditions set forth in this Agreement, the exclusive right and option to lease the Property.

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

AGREEMENT

Section 1. Grant of Option. District grants to Optionee the option to lease the Property for the consideration and under the terms and conditions set forth in this Agreement (the "Option").

Section 2. Term of Option.

a. Term. The term of the Option shall be for a period commencing on the date of this Agreement and ending on the earlier of: (i) the date thirty-six (36) months thereafter (as such date may be extended by the District in its reasonable discretion); (ii) the date all construction financing required for the construction of the Development (the "Construction

Financing") closes (the "Construction Closing"); or, (iii) the occurrence of a Default Termination (as defined in Section 9 below) (the "Option Term"); provided, however, that such Option Term may be extended upon mutual written agreement of the Parties

b. Exercise of Option. At any time prior to the expiration of the Option Term, Optionee may exercise the Option by giving written notice to the District of its exercise of the Option (the "Option Notice").

c. Expiration; Quitclaim. The Option shall expire at 5:00 P.M. on the last day of the Option Term. If the expiration date of the Option Term falls on a Saturday, Sunday or legal holiday in the State of California, then the expiration date shall be extended to the next following business day. Within fifteen (15) days of the expiration of the Option Term or earlier termination of this Agreement, the Optionee shall sign and deliver a quitclaim deed or such other document as may be reasonably required by the District to evidence the termination of the Option.

Section 3. Option Consideration. The Option is granted in consideration of Optionee's payment to District of the sum of One Hundred Dollars (\$100) to be paid upon the execution of this Agreement.

Section 4. Conditions Precedent to Exercise of Option. The Optionee's right to exercise the Option pursuant to Section 2 above is expressly subject to the satisfaction of the following conditions precedent (the "Exercise Conditions"):

a. The Optionee shall have obtained any and all governmental permits or approvals required for the construction of the Development, but exclusive of any building permits.

b. All applicable environmental review under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) shall have been completed.

c. The Optionee shall have secured commitments for all Construction Financing.

If the Exercise Conditions have not occurred by the expiration of the Option Term, the District may terminate this Agreement, and neither party shall have any further rights or obligations hereunder, unless the failure of an Exercise Condition to occur is due to the action or inaction of the District.

Section 5. Further Agreements.

a. Development Agreement. Within sixty (60) days of the Parties executing this Option Agreement, the Parties shall prepare a development agreement that outlines the specific terms and conditions governing the planning, development and construction of the Development (the "Development Agreement"). The Development Agreement will include

provisions specifically related to, among other things, the District's role in the planning and development process, parameters for community engagement, project coordination with existing District uses, construction procurement, on-going construction policies, practices and protocols and property management considerations (i.e., identification of District workforce tenants, etc.). In the event that either this Option Agreement or the Development Agreement is terminated prior to the execution of the Lease (as defined below), the Parties hereby agree that Developer shall retain ownership of any and all property work product produced by or paid for by Developer in connection with the Property.

b. Ground Lease. Following receipt of the Option Notice, the District shall prepare a ground lease for the Property, which will be subject to the approval of District and Lessee (the "Lease"). The Option Notice shall specify a date for commencement of the Lease, which shall be at least sixty (60) days after the date of the Option Notice, or such additional time as may be mutually agreed to by the parties, provided that the Lease is executed and commences upon the Construction Closing. The Lease shall be substantially in accordance with the following:

- 1) Term of Lease. The term of the Lease shall be ninety-nine (99) years from the date of execution.
- 2) Lease Payment. Lessee shall pay District as annual rent for the Property the sum of One Dollar (\$1.00) ("Rent"). Lessee shall pay Rent for the first year on or before the Commencement Date and annually in advance on each anniversary of the Commencement Date for each subsequent year of the Term and each year of any extension.
- 3) Taxes, Assessments and Utilities. Lessee shall be responsible for the payment of any and all property taxes and assessments and other charges that may be assessed, levied or imposed against the leasehold estate and the Property during the entire term of the Lease, and shall pay all utilities used, rendered or supplied upon or in connection with the Property during the term of the Lease.
- 4) Use. The Property shall be used during the term of the Lease only for the construction, development, operation, marketing for lease and leasing of the Development, and such other uses as are reasonably and customarily attendant to such uses, in accordance with all applicable funding requirements.
- 5) Construction and Operation of the Project. Lessee shall be responsible for the construction, operation, and maintenance of the Development during the Lease term.
- 6) Condition of Property. The Lease shall be made "AS IS," with no warranties or representations by the District concerning the condition of the leased Property, including the presence or absence of any Hazardous Materials as defined in the Lease.

- 7) Encumbrance of Leasehold Property. Lessee shall have the right during the term of the Lease to encumber, through a leasehold mortgage, pursuant to financing approved by the District, all of Lessee's right, title and interest in the leased Property subject to the provisions of the Lease (including mortgagee protection language to the extent required by Lessee's lenders); provided, however, that any such leasehold mortgage shall be in all respects subordinate and inferior to the District's right, title and interest as fee owner of the Property. Notwithstanding the foregoing, the District will permit rent restriction agreements to be recorded against the District's fee interest if required pursuant to State of California program regulations applicable to Project financing sources,
- 8) No Liens. Lessee shall not have any right, authority or power to bind the District, or its fee interest in the Property, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Development or any change, alteration or addition thereto.
- 9) Ownership of Improvements. Lessee shall own a fee interest in all improvements constructed on the Property during the term of the Lease. Upon termination of the Lease, ownership of all improvements constructed on the Property shall automatically transfer to the District.

Section 6. Closing Expenses. All expenses, fees or costs (except attorneys' fees and costs) incurred in connection with the leasing of the Property, including but not limited to city and county documentary transfer tax, conveyance taxes, recording charges (if any), and costs of title insurance shall be borne by the Optionee. Each party shall bear its own attorneys' fees and costs.

Section 7. Right to Enter.

a. During the Option Term, at Optionee's sole cost and expense, Optionee and its designated agents, employees, contractors and representatives (collectively, "Agents") shall have the right to enter on the Property at all reasonable times and from time to time, for the purpose of conducting any and all procedures, inspections, surveys, studies, tests and investigations as Optionee may desire in connection with this Agreement and the Development, including, without limitation, soils tests, surveys, and environmental assessments.

b. Optionee and all Agents shall conduct their activities under this Section 7 in compliance with all applicable laws, ordinances, codes and regulations of the Federal, state or local governments. Optionee shall, at its sole cost and expense, promptly repair any physical damage or alteration of the physical condition of the Property that results from any activity under this Section 7 by or on behalf of Optionee. Optionee shall keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Optionee with respect to any inspection or testing of the Property. Optionee shall return the

Property as nearly as possible to the same condition the Property was in prior to such entry or activities.

c. The Optionee shall indemnify the District, its board members, officials, directors, employees and agents (collectively, the "Indemnitees") from and against any losses, claims, damages, liabilities, judgments, causes of action or actions (including attorneys' fee and costs (collectively, "Claims") arising out of the entry of Optionee (or its Agents) onto the Property. Notwithstanding the above, Optionee's indemnity obligations under this Agreement shall not extend to any of Optionee's actions taken at the direction of the District, except to the extent such actions constitute gross negligence, fraud, intentional misrepresentation, or willful misconduct on the part of Optionee.

Section 8. Permits and Approvals. During the Option Term, Optionee may meet with all city, county, and other governmental entities to discuss matters relating to the Development. The District agrees to reasonably 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.

Section 9. 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 thirty (30) days after delivery of written notice thereof by the District to Optionee; or (ii) that Optionee is in default under any other agreement with the District pertaining to the Development or Property, 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 District may terminate this Agreement (a "Default Termination"). The District may terminate the 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 shall be terminated, and neither party shall have any further rights or obligations hereunder.

Section 10. Notices. Any notice or other communication given or made pursuant to this Agreement shall be in writing and shall be deemed given if (i) delivered personally or by courier, (ii) telecopied, (iii) sent by overnight express delivery, or (iv) mailed by registered or certified mail (return receipt requested), postage prepaid, to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party):

If to District, to: John Calise, CSRM
Executive Director
Facilities Division
Berkeley Unified School District
1720 Oregon Street
Berkeley, CA. 94703
johncalise@berkeley.net

and a copy to: Clarissa Canady, Dannis Woliver Kelley
200 California Street, Suite 400
San Francisco, California 94111
ccanady@dwkesq.com

If to Optionee, to: c/o Abode Communities
1149 S. Hill Street, Suite 700
Los Angeles, California 90015
Attn: Robin Hughes

With copy to:

c/o Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, CA 94703
Attn: CEO

and a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP
633 West Fifth Street, 64th Floor
Los Angeles, CA 90071
Attention: Nicole Deddens

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, telecopy transmission, delivery to overnight courier or express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of telecopy, upon receipt of electronic confirmation thereof, (iii) in the case of delivery by overnight courier or express delivery service, on the date following dispatch, and (iv) in the case of mailing, on the date specified in the return receipt therefor.

Section 11. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.

Section 12. Assignment of Option. Optionee may not assign its rights and obligations under this Agreement without the prior written consent of District. Optionee shall have the right to assign all of its right, title, and interest in and to the Option, to an affiliate, utilizing a form of assignment and assumption agreement to be provided by the District.

Section 13. Binding Effect. This Agreement and its terms and conditions shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

Section 14. Time. Time is of the essence of this Agreement.

Section 15. 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 16. 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 17. 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 Agreement or exercise of the Option.

Section 18. Captions. The captions of the paragraphs of this Agreement are for convenience and reference only, and the words contained in the captions shall in no way be held to explain, modify, amplify or aid in the interpretations, constructions or meaning of the provisions of this Agreement.

Section 19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

Section 20. Entire Agreement; Signatures. This Agreement contains the entire agreement between the parties respecting the matters set forth, and supersedes all prior agreements between the parties respecting such matters.

Section 21. Attorneys' Fees. If either party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable attorneys' fees and costs. Any such attorneys' fees and costs incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees and costs obligation is intended to be separate from the other provisions of this Agreement and to survive and not be merged into any such judgment.

IN WITNESS WHEREOF, Optionee and District have executed this Agreement as of the date first written above.

OPTIONEE:

ABODE COMMUNITIES, a California
nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

DISTRICT:

BERKELEY UNIFIED SCHOOL DISTRICT

By: _____

SATELLITE AFFORDABLE HOUSING ASSOCIATES,
a California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

EXHIBIT A

Legal Description of Property

Location and Legal Description

The Property is located in West Berkeley, California, along the east side of San Pablo Avenue between Virginia Street and Francisco Street (see Figure 1). It is bounded by San Pablo Avenue, Virginia Street, Francisco Street, and adjoining parcels. By convention in this report, the compass orientation of San Pablo Avenue is taken as north-south, and the compass orientations of Virginia Street and Francisco Street is taken as east-west.

The Property consists of a portion of the parcel designated by the Alameda County Assessor's Office as Assessor Parcel Number (APN) 58-2129-17. APN 58-2129-17 contains approximately 4.44 acres. The approximate acreage of the Property is 1.6 acres (see Figure 2). The lot shape is irregular, with approximately 260 feet of frontage along San Pablo Avenue and Virginia Street and nearly 100 feet along Francisco Street.

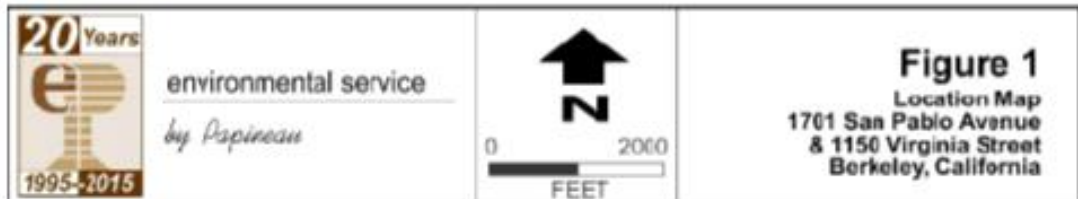




Figure 2
Property
Plot Plan

1701 San Pablo Ave.
& 1150 Virginia Street
Berkeley, California

▲ approximate limit
of original school
land in 1901

