

RESOLUTION NO. 2019-231

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
APPROVING THE TRANSFER OF OWNERSHIP OF THE AGAVE APARTMENTS
PROPERTY FROM AGAVE ASSOCIATES, LP TO AGAVE BY VINTAGE, LP AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE ASSIGNMENT AND
ASSUMPTION AGREEMENT WITH AGAVE ASSOCIATES, LP AND AGAVE BY
VINTAGE, LP (CEQA EXEMPT)**

WHEREAS, the City of Elk Grove (the "City"), on October 1, 2003, entered into an Affordable Housing Loan Agreement ("Loan Agreement") with Agave Associates, LP ("Owner"), the purpose of which was to assist with the construction of the Agave Apartments ("Project") located at 10070 Willard Parkway; and

WHEREAS, the City and the Owner on October 1, 2003, entered into a Regulatory Agreement ("Regulatory Agreement"), the purpose of which was to implement affordability restrictions on 150 of the 188 units at the Project; and

WHEREAS, the Owner, on October 1, 2003, entered into a Deed of Trust for the benefit of the City ("Deed of Trust"), the purpose of which was to secure obligations of the Loan Agreement and Regulatory Agreement; and

WHEREAS, on September 12, 2019, such Regulatory Agreement and Deed of Trust were amended by an Amendment to Deed of Trust and Regulatory Agreement, the purpose of which was to secure obligations of the Regulatory Agreement and Deed of Trust under a new financing structure and change in ownership interests; and

WHEREAS, Section 31 of the Regulatory Agreement sets forth the City's right to review any sale or transfer of the Project; and

WHEREAS, the Owner is proposing to transfer ownership of the Project to Agave by Vintage, LP ("Buyer"); and

WHEREAS, the Owner, Buyer, and City have negotiated an Assignment and Assumption of Deed of Trust and Regulatory Agreement (Assignment and Assumption Agreement), to be executed and recorded prior to or in coordination with the closing of anticipated new financing on the Project; and

WHEREAS, the City Council has reviewed the proposed ownership transfer in light of the Project's finances and the new entities' qualifications, and found the transfer to be in the City's best interest; and

WHEREAS, the approval of this transfer does not qualify as a "project" subject to the California Environmental Quality Act (CEQA) because it will result in no direct physical effect on the environment, and is, therefore, exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c)(2)(3); 15378(a)).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby approves the following:

- 1) Approves the transfer of the Project from Owner to Buyer, subject to execution of a document entitled Assignment and Assumption Agreement (Exhibit A); and
- 2) Authorizing the City Manager to execute the Assignment and Assumption Agreement in substantially the form provided subject to approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 23rd day of October 2019



STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

RECORDING REQUESTED BY AND
AFTER RECORDATION, MAIL TO:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: Housing Program Manager

No fee for recordation pursuant to
Government Code Section 27383 and 6103

**ASSIGNMENT AND ASSUMPTION OF DEED OF TRUST AND REGULATORY
AGREEMENT
Agave Apartments Project**

This ASSIGNMENT AND ASSUMPTION OF DEED OF TRUST AND REGULATORY AGREEMENT (“Agreement”) is made and entered into this ____ day of _____ 2019, among AGAVE ASSOCIATES, LP, a Nevada limited partnership (“Assignor”), AGAVE BY VINTAGE, LP, a California limited partnership (“Assignee” or “Borrower”), and the CITY OF ELK GROVE, a California municipal corporation (“City”).

RECITALS

- A. The Assignor is the owner of that certain real property in the City of Elk Grove, County of Sacramento, State of California, which is more particularly described in Exhibit A, attached hereto and incorporated herein by reference (said real property, all improvements constructed thereon, and all personal property of the Assignor situated thereon being collectively referred to as the “Property”).
- B. Assignor and the City entered into a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated October 1, 2003, and recorded in Book 20031009, Page 1871 of the Official Records of Sacramento County (“Deed of Trust”) and a Regulatory Agreement dated October 1, 2003, and recorded in Book 20031009, Page 1870 of the Official Records of Sacramento County (“Regulatory Agreement”). Both the Deed of Trust and Regulatory Agreement were amended by that certain Amendment to Deed of Trust and Regulatory Agreement dated September 17, 2019 and recorded in Book 20190917 Page 0682 of the Official Records of Sacramento County (“Amendment” and together with the Deed of Trust and the Regulatory Agreement the “City Documents”). The Regulatory Agreement, as amended by the Amendment, among other things, restricts rents charged to residents of the apartment project located on the Property, commonly known as Agave Apartments (the “Project”).

- C. The Assignor, as the current owner of the Property, constitutes the “Borrower,” “Trustor,” and “Owner” under the City Documents. In connection with the sale by the Assignor to the Assignee of the Property, and as required by the City Documents, the Assignor desires the right to assign to the Assignee, and the Assignee desires by this Agreement to assume certain rights, title, interest, and obligations of Owner under the City Documents as expressly set forth herein and excepting those obligations noted herein, from and after the Effective Date (as defined in Section 8 below), subject to the consent of the City as set forth herein.

NOW, THEREFORE, in consideration of the covenants, agreements, and promises set forth below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption of City Documents.
 - 1.1 The Assignor hereby assigns to the Assignee all of the rights, duties, liabilities, and obligations of Owner arising under the City Documents from and after the Effective Date, and the Assignee unconditionally accepts and assumes all such rights, duties, liabilities, and obligations and agrees to perform all such duties, liabilities, and obligations first arising from and after the Effective Date in accordance with the terms of the City Documents. Assignor hereby agrees to indemnify, defend, protect, and hold Assignee harmless from and against any and all claims, losses, liabilities, demands, and expenses of whatever nature, including reasonable attorneys’ fees, suffered or incurred by Assignee by reason of any breach by Assignor of any of its obligations under the City Documents prior to the Effective Date. Assignee hereby agrees to indemnify, defend, protect, and hold Assignor harmless from and against any and all claims, losses, liabilities, demands, and expenses of whatever nature, including reasonable attorneys’ fees, suffered or incurred by Assignor by reason of any breach by Assignee of any of its obligations under the City Documents arising from and after the Effective Date.
 - 1.2 The City hereby acknowledges and consents to the transfer of ownership interest in the Property from the Assignor to the Assignee and the assignment to and assumption by the Assignee of the obligations of Assignor under the City Documents as provided herein. The City hereby releases, acquits, and discharges the Assignor from any and all obligations, claims, causes of action, damages, costs, expenses, and liabilities arising from acts occurring on and after the Effective Date which are in any way based upon, arise out of, relate to, or have any connection with the City Documents, provided, however, that the Assignor shall not be released from any such obligation, claim, cause of action, damages, costs, expenses, or liability of the Assignor arising prior to the Effective Date even if notice of such obligation, claim, cause of action, damages, costs, expenses, or liability is received after the Effective Date.
 - 1.3 Notwithstanding anything to the contrary contained herein, the foregoing release shall not release the Assignor from any liability of obligation owing to the City

under this Agreement of the representation and warranty set forth in Section 2 below.

2. No Defaults. The Assignor represents and warrants to the City and Assignee that, to the Assignor's actual knowledge, no default by the Assignor under the City Documents has occurred and is continuing and no event has occurred and is continuing which, with the giving of notice or passage of time or both, would constitute a default under the City Documents with respect to and of the Assignor's obligations.
3. Notices. All correspondence and notices given or required to be given under the City Documents for "Borrower," "Trustor," and/or "Owner" shall, on and after the Effective Date, be addressed to the Assignee as follows:

Agave by Vintage LP
369 San Miguel Drive, Suite 135
Newport Beach, CA 92660
Attn: Michael K. Gancar
4. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California. Any legal challenges arising out of this Agreement and/or the City Documents shall be brought in a court of competent jurisdiction in the County of Sacramento.
5. Execution and Counterparts. This Agreement may be signed in counterparts, and each counterpart shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties agree that such counterpart shall be effective and enforceable on or about the date of the last required signature.
6. Covenant of Further Assurances. All parties to this Agreement shall take, undertake, approve, sanction, and perform, in full, any and all acts and activities and execute and deliver any and all certificates, documents, permits, licenses, agreements, contracts, written instruments, and other papers deemed necessary and appropriate for successful and complete compliance with each and every term and condition of the City Documents.
7. City Documents in Full Force. Except as expressly set forth herein, the City Documents are not altered, amended, or modified by reason of this Agreement, and shall remain in full force and effect and their validity and enforceability are hereby ratified and confirmed.
8. Effective Date. This Agreement shall be effective on the date of its recordation in the Official Records of Sacramento County and of the grant deed transferring ownership of the Property to the Assignee ("Effective Date").

9. Authority to Execute. The undersigned individuals hereby warrant and represent that they have full authority to execute this Agreement on behalf of the entities for which they have signed.
10. Entire Agreement. This Agreement, any attachments hereto, and the City Documents constitute the entire agreement between Assignor, Assignee, and City concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.
11. Severability. The invalidity, illegality or unenforceability, of any provision of this Agreement shall not render the other provisions invalid, illegal, or unenforceable.
12. Construction and Interpretation. Assignor, Assignee, and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.
13. Binding. This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of the Assignor and Assignee and to the successors in interest of City in the same manner as if such parties had been expressly named herein.
14. Approval. This Agreement is contingent upon approval by the City Council for the City of Elk Grove, which shall be deemed to have been obtained upon execution of this Agreement by the City.

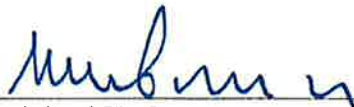
<Remainder of page intentionally left blank>

IN WITNESS WHEREOF, the City, Assignor, and Assignee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this 11 day of October, 2019.

ASSIGNOR:

AGAVE ASSOCIATES, LP, a Nevada limited partnership

By: AGAVE ASSOCIATES, LLC, a Nevada limited liability company,
its Administrative General Partner

By: 
Name: Michael K. Gancar
Title: Manager

By: HEARTHSTONE HOUSING FOUNDATION, a California nonprofit public benefit
corporation,
its Managing General Partner

By: _____
Name: Socorro Vasquez
Title: Executive Director

<NOTARY ACKNOWLEDGEMENT REQUIRED>

IN WITNESS WHEREOF, the City, Assignor, and Assignee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this _____ day of _____, 2019.


ASSIGNOR:

AGAVE ASSOCIATES, LP, a Nevada limited partnership

By: AGAVE ASSOCIATES, LLC, a Nevada limited liability company,
its Administrative General Partner

By: _____
Name: Michael K. Gancar
Title: Manager

By: HEARTHSTONE HOUSING FOUNDATION, a California nonprofit public benefit
corporation,
its Managing General Partner

By:  _____
Name: Socorro Vasquez
Title: Executive Director

<NOTARY ACKNOWLEDGEMENT REQUIRED>

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

On October 14, 2019 before me, Laura Sanchez, Notary Public
(insert name and title of the officer)

personally appeared Socorro Vasquez,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

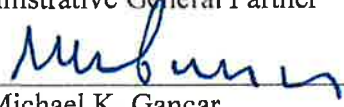


Signature  (Seal)

ASSIGNEE:

AGAVE BY VINTAGE, LP,
a California limited partnership

By: AGAVE BY VINTAGE PARTNERS, LLC, a California limited liability company,
its Administrative General Partner

By: 
Name: Michael K. Gancar
Title: Manager

By: HEARTHSTONE CA PROPERTIES II, LLC, a California limited liability company,
its Managing General Partner

By: Hearthstone Housing Foundation, a California nonprofit public benefit corporation,
its sole member

By: _____
Name: Socorro Vasquez
Title: President

<NOTARY ACKNOWLEDGEMENT REQUIRED>

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On October 11, 2019 before me, Debra Lyn Scharf, Notary Public, personally appeared Michael Gancar, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their-authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Debra Lyn Scharf

NOTARY PUBLIC in and for the State of California,
residing at Newport Beach, Ca.
My Commission Expires 12/09/2020



ASSIGNEE:


AGAVE BY VINTAGE, LP,
a California limited partnership

By: AGAVE BY VINTAGE PARTNERS, LLC, a California limited liability company,
its Administrative General Partner

By: _____
Name: Michael K. Gancar
Title: Manager

By: HEARTHSTONE CA PROPERTIES II, LLC, a California limited liability company,
its Managing General Partner

By: Hearthstone Housing Foundation, a California nonprofit public benefit corporation,
its sole member

By:  _____
Name: Socorro Vasquez
Title: President

<NOTARY ACKNOWLEDGEMENT REQUIRED>

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

On October 14, 2019 before me, Laura Sanchez, Notary Public
(insert name and title of the officer)

personally appeared Socorro Vasquez,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)

CITY OF ELK GROVE:

By: _____
JASON BEHRMANN
Its: City Manager

Attest:

By: _____
JASON LINDGREN
Its: City Clerk

Approved as to form:

By:  _____
JONATHAN P. HOBBS
Its: City Attorney

<NOTARY ACKNOWLEDGEMENT REQUIRED>

**EXHIBIT A
LEGAL DESCRIPTION**

The Property referred to herein is situated in the City of Elk Grove, County of Sacramento, State of California, and is described as follows:

LOT C, AS SHOWN ON THE "FINAL MAP OF ELK GROVE MEADOWS, UNIT 2", RECORDED IN BOOK 316 OF MAPS, PAGE 1, RECORDS OF SACRAMENTO COUNTY, AS MAY HAVE BEEN AMENDED BY THAT CERTIFICATES OF CORRECTION EXECUTED BY DOUGLAS R. OWYANG, DATED SEPTEMBER 24, 2003, RECORDED ON SEPTEMBER 29, 2003 AS IN BOOK 20030929, PAGE 3298; DATED SEPTEMBER 14, 2004, RECORDED ON SEPTEMBER 24, 2004 AS IN BOOK 20040924, PAGE 0290; DATED JANUARY 31, 2005, RECORDED ON FEBRUARY 09, 2005 AS IN BOOK 20050209, PAGE 0074; AND DATED APRIL 06, 2005, RECORDED ON MAY 25, 2005 AS IN BOOK 20050525, PAGE 2049, ALL OF OFFICIAL RECORDS.

APN 132-1390-048-0000

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2019-231**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)


I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on October 23, 2019 by the following vote:

AYES: **COUNCILMEMBERS:** *Ly, Hume, Detrick, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *Nguyen*



**Jason Lindgren, City Clerk
City of Elk Grove, California**