

**RESOLUTION NO. HA\_\_\_ / \_\_\_**

**A JOINT RESOLUTION OF THE CITY OF MILPITAS HOUSING AUTHORITY, THE CITY COUNCIL OF THE CITY OF MILPITAS, AND THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS (I) APPROVING THE ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN THE SUCCESSOR AGENCY OF THE MILPITAS REDEVELOPMENT AGENCY AND THE MILPITAS HOUSING AUTHORITY FOR THE REAL PROPERTY LOCATED AT 1077 LUZ DEL SOL LOOP, (II) AUTHORIZING THE PURCHASE OF THE AFFORDABLE HOUSING UNIT LOCATED AT 1077 LUZ DEL SOL LOOP USING MILPITAS HOUSING AUTHORITY FUNDS IN THE AMOUNT NOT TO EXCEED \$407,500, (III) AUTHORIZING THE SALE OF THE AFFORDABLE HOUSING UNIT LOCATED AT 1077 LUZ DEL SOL LOOP IN THE MINIMUM AMOUNT OF \$407,500 TO AN ELIGIBLE LOW-INCOME BUYER, AND (IV) AUTHORIZING THE EXECUTIVE DIRECTOR OF THE MILPITAS HOUSING AUTHORITY TO NEGOTIATE AND EXECUTE ALL REQUIRED DOCUMENTS TO COMPLETE THE PURCHASE AND SALE OF THE AFFORDABLE HOUSING UNIT**

**WHEREAS**, the former Milpitas Redevelopment Agency (“Agency”) previously maintained an affordable housing fund in accordance with Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) for the purpose of encouraging construction of affordable housing within the Redevelopment Plan Area; and

**WHEREAS**, the Agency and KB Homes, South Bay, Inc. (“Developer”) entered into a Memorandum of Understanding dated May 18, 2004, and an Owner Participation Agreement dated January 18, 2005, under which Developer agreed to construct and sell one hundred and ten (110) affordable units to persons of very low, low, and moderate incomes; and

**WHEREAS**, pursuant to the agreements described above property owners Howard H. Lou and Anna Jia Lou (“Property Owners”) purchased an affordable unit constructed by the Developer in the amount of Three Hundred Sixty-Eight Thousand One Hundred Fifty Dollars (\$368,150) located at 1077 Luz Del Sol Loop, Milpitas, California 95035 (“Property”); and

**WHEREAS**, Agency and Property Owners entered into a Resale Restriction Agreement and Option to Purchase dated July 29, 2008, recorded as Document No. 20024047 (“Resale Restriction Agreement”), to preserve and maintain the Property as an affordable unit and provide the Agency with the option to purchase the Property in the event of a sale, conveyance, transfer, lease or otherwise; and

**WHEREAS**, pursuant to ABx1 26 enacted effective June 28, 2011, as clarified and amended by AB 1484 effective June 27, 2012 (collectively, the "Redevelopment Dissolution Law"):

1. The Agency, together with every redevelopment agency in California, was dissolved as of February 1, 2012; and

2. The City of Milpitas Housing Authority (the "Housing Authority"), the City Council, and the Agency adopted joint Resolution HA3/8151/RA426 on January 4, 2012, whereby (a) the City of Milpitas (“City”), acting in a separate legal capacity and as a separate legal entity, elected to be the successor agency (the "Successor Agency") to the dissolved Agency for purposes of paying the obligations, unwinding the affairs, and liquidating specified assets of the dissolved Agency; and (b) the City selected the Housing Authority and the Housing Authority elected to take on the responsibility of performing the housing functions of the dissolved Agency; and

**WHEREAS**, for the foregoing reasons, and in accordance with the requirements of Health and Safety Code Section 34177(g) calling for Successor Agency to transfer the housing functions and assets of the dissolved Agency to the Housing Authority, the Successor Agency and the Housing Authority desire to enter into an Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), whereby the Successor Agency will assign and delegate its rights and obligations under the Resale Restriction Agreement to the Housing Authority and the Housing Authority will accept such assignment and delegation; and

**WHEREAS**, the Property Owners have contacted the Milpitas Housing Authority with their desire to sell the Property and, according to the Resale Restriction Agreement, if the existing Property Owners cannot sell the Property as an affordable housing unit due to lack of a qualified buyer, the Property Owners may sell the unit at fair market value, which would eliminate the Resale Restriction Agreement and the long-term affordability of the unit; and

**WHEREAS**, the proposed purchase price of the Property is Four Hundred Seven Thousand Five Hundred Dollars (\$407,500) based on the previous purchase price of Three Hundred Sixty-Eight Thousand One Hundred Fifty Dollars (\$368,150) and Consumer Price Index Adjustment of Thirty-Nine Thousand Five Hundred Dollars (\$39,500) as set forth in Exhibit 1 of this Resolution; and

**WHEREAS**, the proposed purchase of the Property in accordance with the Resale Restriction Agreement will assist in the elimination of blight, will enhance the quality of life of present and future residents, will assist in the provision of affordable housing for very low-income households, and is consistent with the goals of the Redevelopment Plan; and

**WHEREAS**, sufficient funds are available in the Housing Authority Funds to fund the purchase of the Property.

**NOW, THEREFORE** the Housing Authority Board, City Council, and Successor Agency Board hereby find, determine, and resolve as follows:

1. The Housing Authority Board, City Council, and Successor Agency Board have considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. The recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Housing Authority Board, City Council, and Successor Agency Board have reviewed and considered the purchase of the Property under the California Environmental Quality Act ("CEQA") and in exercising their independent judgments determined the purchase of the Property is categorically exempt under Section 15326 (Acquisition of Housing for Housing Assistance Programs) of the CEQA Guidelines.
3. The Housing Authority Board finds the expenditure of Housing Authority Funds in accordance with the executed Resale Restriction Agreement will maintain the availability of affordable housing in the City, which will be of benefit to the City, will further the goals of the Redevelopment Plan, and will be consistent with the implementation plan adopted in connection therewith.
4. The Housing Authority Board further finds the purchase of the Property is necessary to maintain the long-term affordability of the Property and will provide the opportunity for low and moderate-income households to become first-time homebuyers.

5. The Housing Authority Board further finds the use of Housing Authority Funds for the purchase of the Property is consistent with the provisions of Community Redevelopment Law by increasing, improving and preserving the community's supply of low and moderate-income housing.
6. The Housing Authority Board and the Successor Agency Board hereby approve the Assignment and Assumption Agreement. The Housing Authority Executive Director and the Successor Agency Executive Director are hereby authorized by the Housing Authority Board and the Successor Agency Board, respectively, to execute the Assignment and Assumption Agreement, subject to staff level correction, if necessary, of any technical errors (such as the correction of typographical misprints, the insertion of address information, and the like) and to implement and take other legally-required actions in connection with the Assignment and Assumption Agreement.
7. The Housing Authority Board authorizes the purchase of the Property located at 1077 Luz Del Sol Loop, Milpitas, California, utilizing Housing Authority funds in the amount not-to-exceed Four Hundred Seven Thousand Five Hundred Dollars (\$407,500). The Housing Authority Executive Director is hereby authorized by the Housing Authority Board to negotiate and execute all required documents to complete the purchase of the Property.
8. After the purchase of the Property as authorized above, the Housing Authority Board authorizes the sale of the Property located at 1077 Luz Del Sol Loop, Milpitas, California, in the minimum amount of Four Hundred Seven Thousand Five Hundred Dollars (\$407,500) to an eligible purchaser meeting the income requirements of the Resale Restriction Agreement. The Housing Authority Executive Director is hereby authorized by the Housing Authority Board to negotiate and execute all required documents to complete the sale of the Property. All money received from the sale of the Property shall be deposited in the Housing Authority Fund.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
 Mary Lavelle, Housing Authority Board  
 Secretary, City Clerk, Successor Agency  
 Secretary

\_\_\_\_\_  
 Jose Esteves, Housing Authority Chair,  
 Mayor, Successor Agency Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
 Michael J. Ogaz, Housing Authority Counsel,  
 City Attorney, Successor Agency Counsel

## Exhibit 1

### Comparison of Purchase Price under Based Price and Appraisal Methodologies

#### Based Price Methodology

<u>Address</u>	<u>Sq. Ft.</u>	<u>Bed/bath Room</u>	<u>Sale Price</u>
1077 Luz Del Sol Loop	1,835	3/2	\$368,150 (o) \$407,500 (p)

(o) Purchase Price of Current Owner

(p) City/Successor Agency/ Authority Price under Base Price Methodology rounded to the nearest whole number.

#### Appraisal Methodology

Estimated appraisal values based upon market data and comparable properties (\*)

1077 Luz Del Sol Loop            \$418,350.

(\*) **Note:** Does not include any incentives the developer or financial lender may offer.

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Milpitas Housing Authority  
Attn: Executive Director  
455 East Calaveras Boulevard  
Milpitas, CA 95035

Request No Fee for Recording  
Per Government Code Section 27383

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ASSIGNMENT AND ASSUMPTION AGREEMENT  
(Resale Restriction Agreement and Option to Purchase)

This Assignment and Assumption Agreement (the "Agreement") is entered into as of \_\_\_\_\_, 2013 (the "Effective Date"), by and between the Successor Agency to the Redevelopment Agency of the City of Milpitas (the "Successor Agency"), a public entity, as successor agency to the dissolved Redevelopment Agency of the City of Milpitas (the "RDA") pursuant to Health and Safety Code Section 34173, and the Milpitas Housing Authority (the "Housing Authority"), a public body, corporate and politic, as housing successor to the RDA pursuant to Health and Safety Code Section 34176. The Successor Agency and the Housing Authority have entered into this Agreement with reference to the following facts and purpose.

RECITALS

A. Pursuant to authority granted under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "CRL"), the RDA had the responsibility to implement the redevelopment plan adopted in 1976 (as subsequently amended, the "Redevelopment Plan") by the City Council (the "City Council") of the City of Milpitas (the "City") for the Milpitas Redevelopment Project Area No. 1 (the "Project Area") as more particularly described in the Redevelopment Plan.

B. In furtherance of the Redevelopment Plan, the RDA previously maintained an affordable housing fund in accordance with CRL for the purpose of encouraging construction of affordable housing within the Project Area (the "Program").

C. In accordance with the Program, RDA and KB Homes, South Bay, Inc. ("Developer") entered into a Memorandum of Understanding dated May 18, 2004 and Owner Participation Agreement dated January 18, 2005 under which Developer agreed to construct and sell one hundred and ten (110) affordable units to persons of very low, low, and moderate incomes.

D. Property owners Howard H. Lou and Anna Jia Lou ("Property Owners") purchased an affordable unit constructed by the Developer in the amount of Three Hundred Sixty-Eight Thousand One Hundred Fifty Dollars (\$368,150) pursuant to the agreements described above located at 1077 Luz Del Sol Loop, Milpitas, CA 95035 ("Property").

E. RDA and Property Owners entered into a Resale Restriction Agreement and Option to Purchase dated July 29, 2008, recorded as Document No. 20024047 ("Resale Restriction Agreement"), to preserve and maintain the Property as an affordable unit and provide the RDA with the option to purchase the Property in the event of a sale, conveyance, transfer, lease or otherwise.

F. Pursuant to ABx1 26 enacted effective June 28, 2011, as clarified and amended by AB 1484 effective June 27, 2012 (collectively, the "Redevelopment Dissolution Law"):

1. The RDA, together with every redevelopment agency in California, was dissolved as of February 1, 2012; and

2. The Housing Authority, the City Council, and the RDA adopted joint resolution HA3/8151/RA426 on January 4, 2012, whereby (a) the City, acting in a separate legal capacity and as a separate legal entity, elected to be the Successor Agency to the dissolved RDA for purposes of paying the obligations, unwinding the affairs, and liquidating specified assets of the dissolved RDA; and (b) the City selected the Housing Authority and the Housing Authority elected to take on the responsibility of performing the housing functions of the dissolved RDA.

G. Health and Safety Code Section 34177(g) requires the Successor Agency to effectuate the transfer of housing functions and assets to the Housing Authority, as housing successor to the dissolved RDA pursuant to Health and Safety Code Section 34176. In compliance with that requirement, the Successor Agency, as general successor to the rights and obligations of the dissolved RDA, and the Housing Authority desire to enter into this Agreement to confirm and document the transfer and assignment of the rights and obligations of the former RDA in the Resale Restriction Agreement to the Housing Authority.

H. The actions set forth in this Agreement consist of effectuating the assignment of the dissolved RDA's rights and obligations under the previously executed Resale Restriction Agreement.

NOW THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Successor Agency and the Housing Authority mutually agree as follows:

Section 1. Assignment of Resale and Restriction Agreement. To confirm, document and effectuate the transfer of the Resale and Restriction Agreement to the Housing Authority pursuant to Health and Safety Code Section 34176, the Successor Agency, as successor agency to the dissolved RDA, hereby assigns and delegates to the Housing Authority all of the dissolved RDA's rights, obligations, title and interest under, in and to the Resale and Restriction Agreement, and any rights, obligations, title and interest that the Successor Agency may have under, in and to the Resale Restriction Agreement.

Section 2. Acceptance of Resale and Restriction Agreement. To confirm, document and effectuate the transfer of the Resale and Restriction Agreement to the Housing Authority pursuant to Health and Safety Code Section 34176, the Housing Authority accepts the above assignment, and assumes the RDA's rights, obligations, title and interest under, in and to the

Resale and Restriction Agreement, and any rights, obligations, title and interest that the Successor Agency may have under, in and to the Resale and Restriction Agreement.

Section 3. California Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

Section 4. Invalidity. Any provision of the Agreement which is determined by a court to be invalid or unenforceable shall be deemed severed herefrom, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof. If the transfer and assignment that is confirmed and effectuated by this Agreement is for any reason found to be invalid, the Resale and Restriction Agreement shall remain in force and effect in accordance with its terms.

Section 5. Headings. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement.

Section 6. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute one and the same instrument.

Section 7. Recordation. Promptly following the Effective Date, the Housing Authority shall cause this Agreement to be recorded in the official records of the County of Santa Clara against the Property.

*[Signatures on following page]*

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

**SUCCESSOR AGENCY:**

SUCCESSOR AGENCY TO THE  
REDEVELOPMENT AGENCY OF THE CITY OF  
MILPITAS, a public entity

By: \_\_\_\_\_  
Thomas C. Williams  
Executive Director

**HOUSING AUTHORITY:**

MILPITAS HOUSING AUTHORITY, a public  
body, corporate and politic

By: \_\_\_\_\_  
Thomas C. Williams  
President

APPROVED AS TO FORM:

\_\_\_\_\_

**[NOTE: SIGNATURES TO BE NOTARIZED]**

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person 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)

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person 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)