

AGREEMENT FOR PURCHASE OF AFFORDABILITY COVENANTS

THIS AGREEMENT FOR PURCHASE OF AFFORDABILITY COVENANTS ("Agreement") is made this ____ day of October, 2017 ("Effective Date"), by and between the City of Milpitas, a municipal corporation (the "City"), and Sunnyhills Investors LLC, a California limited liability company (the "Owner"). City and Owner sometimes individually are referred to hereinafter as a "Party" and, together as the "Parties."

RECITALS

WHEREAS, the City is committed to retaining affordable housing throughout the City, given the lack of readily available affordable housing units both in the City and the region;

WHEREAS, Owner owns the real property located at 1724 Sunnyhills Drive, Milpitas, CA (APN No. 026-06-009) ("Property"), which has supplied 149 affordable housing units to the City through Housing and Urban Development (HUD) project-based housing vouchers over the last 30 years;

WHEREAS, the City understands Owner would prefer to redevelop the Property or potentially build additional housing units on the Property, and that development scenarios will take some time to plan, engage the public, determine the level of environmental review required under the California Environmental Quality Act (CEQA), and obtain the requisite entitlements and permits;

WHEREAS, the City is also aware that Owner is required to provide notice to HUD by October 27, 2017 regarding whether Owner intends to renew the existing project-based housing voucher contract with HUD, which will expire on February 28, 2018;

WHEREAS, due to this time constraint and because the City would like to retain the existing affordable housing units, the City is prepared to assist Owner with the preservation of affordable housing units by providing monetary contributions intended to meet any shortfall associated with operations and maintenance of the Property that may not already be covered by the existing HUD housing voucher program. The City's monetary contribution will be in the form of a purchase from Owner of a Covenant in the Property requiring Owner to renew a contract with HUD for a minimum of 5 years to ensure the continued affordability of the existing units at the Property in the HUD housing voucher program ("HUD Covenant")

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the mutual covenants listed herein, the Parties agree as follows:

1. Recitals. The Recitals set out above are true and correct.

2. Owner's Obligations:

- a. The Owner shall renew its existing HUD Covenant with HUD for an additional 5 years to the date ending February 28, 2023 and shall at all times remain in compliance with that HUD Covenant.
- b. Owner shall record the extension of the HUD Covenant against the title to the Property and reasonably provide evidence of such to the City.
- c. In the event that the HUD Covenant expires, for whatever reason, Owner agrees to use best efforts to record another document that is acceptable to the City, to ensure the continued affordability of the existing units at the Property for the 5 years contemplated in Section 2 a. above.
- d. Owner shall provide City with an annual certification of compliance with the HUD Covenant.
- e. Owner agrees to record a "Memorandum of Agreement", a form of which is attached hereto as Exhibit A, against the Property.
- f. Owner shall comply with all applicable requirements of local, state and federal law.

3. City Obligations:

- a. If the HUD Covenant is renewed for 5 years to the date ending February 28, 2023, and Owner is at all times in compliance with the HUD Covenant, then the City would commit to pay Owner up to the total amount of \$1.25 Million.
- b. With evidence acceptable to the City that the HUD Covenant is in effect, Memorandum of Agreement recorded against the Property, certification of compliance with the HUD Covenant, City shall pay Owner \$250,000 per year by

January 15th of each year for five years, ending January 15, 2023, to reimburse capital improvements and repairs.

- c. City shall comply with all applicable requirements of local, state and federal law.
- d. City agrees to execute the “Memorandum of Agreement”.
- e. Upon receipt of a formal application, the City is prepared to diligently process a development application for the consideration of up to 45 new residential units on the Property along with a development agreement.

4. Term of Agreement; Early Termination; Refund of Payment.

This Agreement shall terminate upon the expiration of the HUD Covenant or sooner if Owner is not in compliance with the terms of the provisions of this Agreement. In the event that Owner is not in compliance with this Agreement, or in the event that the HUD Covenant does not extend for the period of 5 years ending February 28, 2023, then Owner agrees to refund any payments made by City to Owner pursuant to this Agreement. The City shall have the right to terminate this Agreement based on any unforeseen financial constraints or any action by Owner that is adverse to the preservation of the Property for affordable housing.

5. Notice.

All notices given or required to be given hereunder shall be in writing and addressed to the Parties set out below, or to such other address as may be noticed under and pursuant to this paragraph. Any such notice shall be considered served when actually received by the Party intended, whether personally served or sent postage prepaid by registered or certified mail, return receipt requested.

City: City Manager
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035

With copy to: City Attorney
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035

Owner: Sunnyhills Investors LLC
Attn: John Kehriotis
100 Saratoga Ave, Suite 300
Santa Clara, CA 95051

With copy to: _____

6. Limitations of this Agreement.

This Agreement does not commit the City to anything other than the transactions outlined above.

7. Miscellaneous:

a. Exemption from CEQA.

The approval of this Agreement does not constitute a project under CEQA nor is any additional environmental review required at this time as there is no impact on the environment.

b. Entire Agreement; Integration. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Owner with respect to the subject matter of this Agreement. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

c. Waiver. No waiver of any term or condition of this Agreement shall be a continuing waiver thereof.

d. Amendments to Agreement. Any amendment to this Agreement shall be in writing and signed by the appropriate authorities of the Parties.

e. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the Parties. No other persons or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the Parties' obligations under this Agreement.

f. Counterparts. This Agreement may be executed in counterparts, each of which

shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

g. Indemnification; Hold Harmless. Upon the Effective Date of this Agreement, the Owner, on behalf of itself and its successors and assigns, shall indemnify, defend (with Counsel acceptable to the City), hold harmless City and its respective members, officers, employees, agents, contractors and consultants, from any and all claims, debts, liabilities, obligations, and causes of action, whether known or unknown, suspected or unsuspected, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) caused by or in any way arising out of or relating to this Agreement, including state or federal prevailing wage laws. This provision shall survive termination of this Agreement.

h. Further Assurances. Each of the parties hereto shall execute and deliver such additional papers, documents and other assurances in each case as are reasonably necessary, and shall do any and all acts and things in each case as are reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Agreement.

i. Financing. The Parties do not intend for this Agreement to impact Owner's ability to use the Property for financing. If this Agreement and the recordation of the Agreement creates such issues, the Parties agree to meet to discuss the issue.

j. Attorney Fees; Governing Law; Venue. In the event of the bringing of any action or lawsuit by either Party against the other in connection with this Agreement, including but not limited to an alleged uncured material breach of this Agreement, the prevailing Party shall be entitled to have and recover of and from the other Party all costs and expenses of the action or lawsuit including, without limitation, actual attorneys' fees and other professional fees resulting therefrom. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California, with venue in the Superior Court of Santa Clara, California.

k. The Parties have participated jointly in the negotiation and drafting of this Agreement and had the opportunity and right to have this Agreement reviewed by their respective legal counsel. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized officers, have caused this Agreement to be executed as of the Effective Date.

CITY OF MILPITAS,
a California Municipal Corporation

BY: _____
ITS: _____

APPROVAL AS TO FORM:

By: _____
City Attorney

Sunnyhills Investors LLC,
a California limited liability company

BY: _____
ITS: _____

EXHIBIT A

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO**

City Manager
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035

(Space above for Recorder’s use only)

**MEMORANDUM OF AGREEMENT FOR
PURCHASE OF AFFORDABILITY COVENANTS**

This Memorandum of Agreement (the “Memorandum”) is made as of the date of the latter signature below by and among City of Milpitas, a municipal corporation (“City”), and Sunnyhills Investors LLC, a California limited liability company (“Owner”).

City and Owner entered into an Agreement for Purchase of Affordability Covenants (the “Agreement”) on the last date of execution thereof, for an initial term of five (5) years

The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of City and Owner

IN WITNESS WHEREOF, City and Owner have caused this Memorandum to be duly executed on the date last written below.

City
City of Milpitas,
a municipal corporation

Owner
Sunnyhills Investors LLC, a California limited
liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit "A"

Real property in the City of Milpitas,
County of Santa Clara,
State of California, described as follows:

APN: _____

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	215-3760	250,000	215-551-4237	250,000

Approve Agreement for Purchase of Affordability Covenants for the Sunnyhills Apartment Complex located at 1724 Sunnyhills Drive (Staff Contact: Bradley Misner, 408-586-3273)

Background:

The property located at 1724 Sunnyhills Drive is a 12.24 acre parcel that was developed in 1971 with 171 apartments, with the approval of a Planned Unit Development (PUD). By the early 1980s, the neighborhood conditions required many calls for Police service due to neighborhood disturbances. However, since the existing property owner acquired the property in 1985, the property conditions have improved greatly. Furthermore, over the last 30 years the property owner has secured Section 8 housing vouchers from the Housing and Urban Development (HUD) Department of the Federal Government to maintain the property for low income qualified households. The owner is receiving a project based voucher from HUD for 149 of the 171 housing units. The existing contract with HUD expires in February 2018 and the owner is required to notify HUD by October 28, 2017 whether they desire to renew the existing contract.

The ownership of the property contacted the City in August of 2016 to discuss the prospects of redeveloping the property with owner-occupied condominium units and submitted conceptual plans in January of 2017. Also, in January of 2017, in accordance with HUD regulations, the owner notified the tenants that they did not intend to renew the existing HUD contracts for the housing vouchers. Therefore, the existing residents would need to obtain tenant based housing vouchers to allow each household to move elsewhere within the City of Milpitas or Santa Clara County. By October 28, 2017, the ownership will need to contact HUD to officially decide whether they will seek a renewed contract. Since the resident notice in January, the residents have become very organized and have attended several City Council meetings seeking assistance from the City Council.

Given the affordable housing crisis in the Bay Area and locally, there are long waiting lists for families seeking affordable homes both in Milpitas and Santa Clara County. The possibility of 171 households being displaced in favor of redevelopment, without guaranteed replacement homes, caused the City and the ownership to begin discussions of alternatives to the proposed condominium project.

Although, the ownership's long-term objective is to potentially redevelop the property, it is clear that any new construction, whether it is to redevelop the existing property, add units, or envision an entirely new development scenario, would take much longer to analyze and seek community input than can be accomplished by the October 28, 2017 deadline with HUD. Negotiations with the owner focused on alternatives to the displacement of the existing residents and the construction of condominium units. During the course of this process, the City has reached out to the non-profit affordable housing community, the County's Office of Supportive Housing, the County Housing Authority, and outside consultants, to obtain information and to seek partnerships. While much of this work is still on-going, city staff and the ownership were able to come to an agreement to ensure an additional 5-year extension of the HUD contract.

Affordability Covenant

Given the compressed timeframe, due to the expiration of the existing HUD contracts in February of 2018, staff and the ownership have worked to agree that the owner would renew the existing HUD contracts for a minimum of 5 years. In exchange for the 5 year commitment and to help with costs associated with capital improvements and repairs of the property, the City would commit a total of \$1.25 million dollars over the 5 year period. The money would be paid in \$250,000 installments, annually. In addition, the City would also agree to process a Development Agreement for the consideration of constructing up to an additional 45 units on the subject property. This process would involve an agreement between the property owner and City Council.

Fiscal Impact:

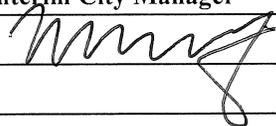
The approval of the Affordable Housing Covenant would require a payment of \$250,000 paid annually over a five year period for a total of \$1,250,000 from either the Housing Authority Fund, Community Benefit Fund or any other appropriated funding source that may become available. For FY 2017-18, an appropriation of \$250,000 is needed from the Community Benefit Fund.

Recommendation(s):

1. Approve an Agreement for the Purchase of Affordability Covenants for the Sunnyhills Apartment Complex located at 1724 Sunnyhills Drive for the total five year period of \$1,250,000.
2. Approve Appropriation of \$250,000 from the Community Benefit Fund to the Planning and Neighborhood Services operating budget.

Check if City Council Approval required.

Meeting Date: October 26, 2017

Requested by:	Bradley J. Misner, AICP, Director of Planning and Neighborhood Services	Date:
Department Head:	Steve J. Pangelinan, Interim City Manager	Date:
Reviewed by:	Finance Director: 	Date: 10-26-17
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by: