CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014
RESOLUTION NO. 16-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO APPROVING THE RESERVATION OF $3,672,000 FROM THE AFFORDABLE HOUSING FUND TO ASSIST IN THE DEVELOPMENT OF AFFORDABLE SENIOR HOUSING AT 19160 STEVENS CREEK BOULEVARD

WHEREAS, the City of Cupertino (the "City") has since 1993 implemented an Office and Industrial Housing Mitigation Program and a Residential Housing Mitigation Program, described in the Housing Element of the City's General Plan (the "Housing Element"), requiring the payment of housing mitigation fees by non-residential development, residential rental projects, and for-sale residential projects with six units or less; and

WHEREAS, residential and non-residential housing mitigation fees are deposited into the City's Below Market Rate Affordable Housing Fund (the "BMR AHF Funds"); and

WHEREAS, the BMR AHF Funds can be used for eligible housing activities such as land acquisition and new construction, pursuant to Strategy 8: Below Market-Rate (BMR) Affordable Housing Fund (AHF) of the Housing Element and Below Market Rate Housing Mitigation Program Procedural Manual; and

WHEREAS, the City previously reserved $3,500,000 in BMR AHF Funds for MidPen Housing Corporation to purchase the property located at 19160 Stevens Creek Boulevard in the City, but MidPen was unable to purchase the property; and

WHEREAS, Stevens Creek, L. P., an affiliate of Charities Housing Development Corporation of Santa Clara County ("Charities Housing"), has requested a loan in the amount of $3,672,000 from the City to assist in the acquisition of property (the "Property") and construction of a new senior affordable housing development located at 19160 Stevens Creek Boulevard in the City; and

WHEREAS, the project is proposed to consist of rental housing units affordable to extremely low and very low-income senior households with incomes between 30% and 50% of area median income for Santa Clara County ("AMI"); and

WHEREAS, the proposed City loan will be used to partially pay off a $3,000,000 predevelopment loan from the Housing Trust Silicon Valley (the "Trust Loan"), which

1

will be used to partially finance the purchase of the Property, and the remaining $1,000,000 of the Trust Loan will be subordinate to the City's loan; and

WHEREAS, the remainder of the proposed City loan will be used to pay off a $1,672,000 acquisition loan from Charities Housing, which will be used to partially finance the purchase of the Property; and

WHEREAS, the use of BMR AHF Funds to acquire property to construct senior affordable housing is consistent with the purposes of the BMR AHF Funds under the Housing Element; and

WHEREAS, the Property, listed as the Barry Swenson site on the Housing Element, is an approved site suitable for the development of affordable housing pursuant to the Housing Element; and

WHEREAS, on June 23, 2016, the Housing Commission of the City of Cupertino passed Housing Commission Resolution No. 16-04 recommending that the City Council reserve $3,672,000 in BMR AHF Funds to assist in the development of affordable senior housing at 19160 Stevens Creek Boulevard.

NOW, THEREFORE, BE IT RESOLVED:

Section 1

After consideration of the funding proposal, the recommendation from the Housing Commission, and all other evidence included in the record, the City Council hereby approves the reservation of $3,672,000 in BMR AHF Funds for Stevens Creek, L. P. (the "City Loan") for a period of two years, with a possible one-year extension, subject to the terms and conditions enumerated in Section 2 of this Resolution; and removes the reservation of $3,500,000 in BMR AHF Funds for MidPen Housing Corporation to purchase the same property.

Section 2

Loan Terms

A. Borrower: Stevens Creek, L. P., a California limited partnership formed to own and operate the development. The general partner of the developer is Stevens Creek Charities LLC, whose sole member is Charities Housing development Corporation of Santa Clara County.

B. Affordability: A 55-year affordability covenant would be recorded providing that all of the units except a manager's unit must be occupied by extremely low and very low-income senior households with incomes between 30% and 50% of AMI.

C. Term: The term of the City Loan would commence as of the closing date and end 55 years from the completion of construction of the development.

D. Interest: 3% simple interest calculated annually.

E. Loan Documents: The City Loan terms would be set forth in a loan agreement. The City Loan would be evidenced by a promissory note and secured by a deed of trust and a regulatory agreement recorded against the property. The City would also record an option agreement, as described below.

F. Security: The deed of trust would be secured against the property. The City and the developer would also enter into an option agreement which would permit the City to purchase the property for the amount of the City loan, plus assumption of the $1,000,000 Trust Loan, if the project does not proceed according to an agreed-upon schedule. (The proposed Trust Loan equals the funds that the City granted to the Housing Trust shortly before the dissolution of the City's redevelopment agency.)

G. Timing of Funding: The City would close the City Loan and disburse the City Loan funds after the development receives its entitlements, which is anticipated to be in February 2017. The anticipated closing date for the City Loan would be 90 days following receipt of all entitlements.

H. Repayment: The City Loan would be repaid through residual receipts payments. The $1,000,000 Trust Loan would be due in its entirety at the end of its 55-year term, not paid through residual receipts. Therefore, the City would receive 100% of the soft lender portion of available residual receipts.

I. Subordination: The Trust Loan must be subordinated to the City Loan through execution of a subordination agreement.

J. Commencement of Construction: The developer must commence construction of the development within a term of two years from the date of the City Loan closing, with a possible one year extension. The option agreement that will be entered into by Charities along with the loan agreement will allow the City to take title of the site two to three years after making the loan (depending on

whether the one-year extension is granted) if construction does not commence during that period.

K. <u>Tax Credit Financing</u>: The developer must work diligently to obtain tax credit financing in a timely manner, and must succeed in obtaining such tax credit financing within a term of two years from the date of the City Loan closing, with a possible one year extension.

L. <u>Financial Pro Forma</u>: The developer must provide for the City's approval an updated pro forma budget and construction schedule for the development.

<u>Conditions to Funding the City Loan</u>

The project must comply with the following conditions prior to disbursement of the City Loan:

A. The development must have received all discretionary entitlements.

B. All review required by the California Environmental Quality Act must be completed.

C. The developer must execute all of the loan documents referenced above, including an option agreement with the City which would allow the City to purchase the property for the price of the City Loan, plus assumption of the $1,000,000 Trust Loan, if the project does not proceed within the timelines set forth in the City Loan agreement.

D. The developer must provide for the City's approval an updated pro forma budget and construction schedule for the development.

E. The developer must provide for the City's approval an updated appraisal within 90 days of the projected close of escrow which reflects adequate value to support the City's loan of $3,670,000. If the appraisal finds that the property is worth less than the amount of the City Loan, the City Loan may only be made upon approval of the City Council.

Section 3

The City authorizes the City Manager to execute all necessary loan documents to effect the City Loan and regulatory requirements, as approved by the City Attorney; to sign all necessary related loan transaction documents as approved by the City Attorney; and to extend the reservation of funds for a one-year period if the developer is making a

good faith effort to obtain all required entitlements.

<u>Section 4</u>

Through this resolution, the City has made no commitment to approve any particular application for land use approvals on the property, and site-specific environmental review will be completed when an application is made and plans are developed for the property. The City retains the absolute sole discretion to (i) modify any proposed project as may, in its sole discretion, be necessary to comply with CEQA and to mitigate impacts of the proposed project, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the proposed project against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, (iv) determine not to approve the project as proposed, or (v) modify the proposed project for consistency with adopted City plans. The reservation of funds for acquisition of the property, without commitment to any specific project, is consistent with the Land Use and Housing Elements of the City's General Plan and with the City's affordable housing policies as contained in the Housing Element. Therefore, it can be seen with certainty that that there is no possibility that the approval of this resolution in and of itself may have a significant effect on the environment, and the activity is not subject to CEQA. (CEQA Guidelines Section 15061ib)(3).)

PASSED AND ADOPTED this 5th day of July 2016, at a meeting of the City Council of the City of Cupertino by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: APPROVED:

_____   _____

Grace Schmidt   Barry Chang
City Clerk   Mayor, City of Cupertino