

ORDINANCE NO. 02-111 AC CMS

AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF OBERLIN AND NEW SUNRISE PROPERTIES, INC., AND DECLARING AN EMERGENCY

WHEREAS, the City of Oberlin and New Sunrise Properties, Inc. entered into an Agreement on May 21, 2002, in order to facilitate the Oberlin Affordable Housing Project; and,

WHEREAS, said Agreement needs to be amended to clarify and correct those lots to be acquired as part of the aforementioned Project.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain and State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the Subrecipient Agreement between the City of Oberlin and New Sunrise Properties, Inc., dated May 21, 2002, is hereby further amended to clarify those lots to be acquired as part of the Oberlin Affordable Housing Project in accordance with the Amendment attached hereto and incorporated herein by reference.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of public peace, health, and safety of the citizens of the City of Oberlin, Ohio, to wit:

"to amend the Subrecipient Agreement between the City of Oberlin and New Sunrise Properties, Inc. as soon as possible in order to ensure the appropriate expenditure of public funds in accordance with all applicable CDBG regulations", and shall take effect immediately upon passage.

PASSED: 1st Reading – November 18, 2002 (E)
 2nd Reading -
 3rd Reading -

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: November 19, 2002

EFFECTIVE DATE: November 19, 2002

City of *Oberlin*

85 South Main Street, Oberlin, Ohio 44074
(440) 775-1531

November 7, 2002

To: City Council
From: Robert DiSpirito, City Manager *RGD*
Re: Ordinance No. 02-111

Ms. Melva Tolbert, Executive Director of New Sunrise Properties, Inc., has requested that the City add a new parcel number to the existing Subrecipient Agreement to reflect a property for which New Sunrise is currently negotiating to purchase. A copy of Ms. Tolbert's letter and a copy of the revised Agreement are attached for your review.

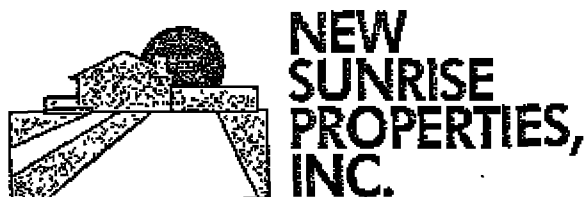
After having spoken with both Ms. Tolbert and Zion CDC Director Mary Jo Pecek, the property at 183 Groveland Street, which is owned by Zion CDC, is also a possible acquisition for New Sunrise Properties, but not until next year. New Sunrise would like to move on the property whose parcel number would be added by Council to the Subrecipient Agreement. That property is located on South Pleasant Street, on the east side and immediately north of the Clark Brothers Construction offices. The parcel is owned by Mr. Richard Faber of the AmBilt Corporation of Rittman, Ohio.

If you have any questions, please let me know.

cc: Jeff Baumann, Director of Public Works
Gary Boyle, Director of Planning & Zoning
Marshall Whitehead, Code Administrator
Eric Severs, City Solicitor
Sal Talarico, City Auditor

"Ohio's Best College Town"

—OHIO Magazine



November 1, 2002

Rob DiSpirito, City Manager
City of Oberlin
85 S Main Street
Oberlin, Ohio 44074

RE: 183 Groveland

Dear Rob:

I am waiting to hear back from Mary Jo Pecsek regarding the above-referenced property. New Sunrise Properties would like to close on another lot before the end of this calendar year. If Zion is not able to move forward with the demolition of 183 Groveland, I would like to move forward with the acquisition of permanent parcel #09-00-096-111-024 which is located on South Pleasant Street near the bike path.

Because our current subrecipient agreement identifies 183 Groveland, it will necessitate amending our agreement to purchase a different site. Please advise if this will create a difficulty so I can continue to move along in the timely development of the next home site.

Thank you in advance for your assistance.

Sincerely,

Melva Tolbert
Executive Director

Subrecipient Agreement
Between the City of Oberlin and
New Sunrise Properties, Inc.
For the Acquisition of Real Property

This Agreement, entered into on this _____ day of _____, 2002 by and between the City of Oberlin (herein called the "City") 85 South Main St., Oberlin, OH 44074 and New Sunrise Properties, Inc., (herein called the "Subrecipient") 1100 North Abbe Road, Suite A, Elyria, OH 44035, an Ohio non-profit corporation.

Witnesseth:

Whereas, the City has applied for and has been allocated FY2001 funds in the amount of Thirty-one Thousand Five Hundred and 00/100 Dollars (\$31,500.00) from the Lorain County Board of Commissioners under the Community Development Block Grant Formula Allocation Program; and

Whereas, the City wishes to engage the Subrecipient to assist the City in utilizing said funds for the acquisition of real property in conjunction with the Oberlin Affordable Housing Project; and

Whereas Oberlin City Council has expressly approved this agreement through Ordinance No. 02-09, on January 22, 2002.

Now, therefore, it is agreed between the parties hereto that:

Section 1: Scope of Services

This Agreement is entered into by the City and the Subrecipient for the purpose of acquiring two (2) buildable scattered site lots within the City of Oberlin. These lots shall be utilized for the construction and sale of two (2) single family homes pursuant to the provisions of this agreement. It is expressly understood that funds in the maximum amount of Thirty-one Thousand Five Hundred and 00/100 Dollars (\$31,500.00) will be made available for the purchase of the lots. Additional funding, if required, is sole responsibility of the Subrecipient.

- 1.) Subrecipient shall negotiate for the purchase of the following two parcels of real estate located in Oberlin, Ohio, upon which it is anticipated two (2) homes would be constructed under the Oberlin Affordable Housing Project. These parcels are described by the following Permanent Parcel Numbers: 09-00-096-107-001/002, and 09-00-096-111-024.

- 2) Subrecipient shall be responsible for all negotiations with any and all potential Sellers. All proposed purchase prices shall be substantiated by a third party appraisal. The purchase price for all individual lots must be acceptable to the City.
- 3) Upon acquisition of a given lot, title shall transfer from the Seller to the Subrecipient. The Subrecipient shall thereafter be responsible for taxes until such time as the subsequently improved lots are resold by the Subrecipient to an approved purchaser as part of the Oberlin Affordable Housing Project. This shall be applicable to all lots acquired under the terms of this Agreement.
- 4) The Subrecipient shall insure or cause insurance to be maintained during the term of this Agreement, including comprehensive general public liability, property damage and indemnity insurance, hazard insurance covering fire and extended coverage, worker's compensation and employee liability insurance, and builder's risk insurance. The insurance policies shall name the City of Oberlin as an additional insured. Subrecipient shall maintain said insurance coverage until such time as the subsequently improved lots are resold as part of the Oberlin Affordable Housing Project.
- 5) Subrecipient shall not transfer any interest in any property acquired under this Agreement without prior written notification to and written approval from the City; disapproval by the City must be given to Subrecipient in writing within three (3) days of notification and must be based solely upon Program ineligibility of the proposed transferee.
- 6) For each lot, the Subrecipient shall complete acquisition, development, construction and resale within eighteen (18) months of the date that the City makes a request to Lorain County for a "draw down" of funds to reimburse Subrecipient for the cost of a purchased lot. If acquisition, development, construction and resale of a lot is not complete within said time period, but development of a lot has commenced and home construction is nearing completion, the City will do all things reasonable and necessary to obtain an extension from the Lorain County Commissioners and the State of Ohio to allow completion and sale of the home or homes involved. If no extension is obtained, the City shall have the right to immediate reimbursement from the Subrecipient in the amount of the purchase price of any lots purchased by Subrecipient with the CDBG funds referred to herein and upon which houses have not been timely completed and sold.
- 7) The Subrecipient shall develop a comprehensive financial package for the Oberlin Affordable Housing Project that will be satisfactory to the City of Oberlin, be approved by the City Council of Oberlin, meet the appropriate CDBG regulations and result in the construction of ten new affordable single family homes and resale of said homes to eligible participants in said Oberlin Affordable Housing Project. Documentation of said comprehensive financial package shall be made available to

the City of Oberlin in accordance with Section 25 of this Agreement. The City shall make every reasonable effort to support the Subrecipient's efforts.

- 8) The total estimated cost for the Oberlin Affordable Housing Project is estimated at \$1,280,050. The proposed sources of funds for those total costs are as follows:

Local Initiatives Support Corporation	\$20,000
Nord Family Foundation	\$75,000
Lorain County CDBG	\$20,000
City of Oberlin CHIP	\$27,000
City of Oberlin CDBG Formula	\$95,250
Ohio Department of Development	\$376,600
USDA Rural Development	\$424,800
FirstMerit Bank	\$241,400
Total	\$1,280,050

- 9) The Subrecipient is authorized to collect a developer's fee for its efforts relating to the Project equal to the sum of Eight Thousand Dollars (\$8,000.00) for each house constructed and resold. The developer's fee shall be used to reimburse Subrecipient for its out-of-pocket and overhead expenses and as a contingency fund for possible construction cost overruns. It will be earned and payable on a house-by-house basis, as each house is constructed, completed and resold as part of the Project. City of Oberlin CDBG Formula Allocation Funds shall not be used to pay the developer's fee.

Section 2: Source of Funds

All funds expended pursuant to this Agreement shall be from FY 2001 CDBG Formula Allocation Funds held by the Lorain County Board of Commissioners for use by the City of Oberlin in accordance with the grant agreement between the Lorain County Board of Commissioners and the City.

FY 2001 funds in the total amount of Thirty-one Thousand Five Hundred and 00/100 Dollars (\$31,500.00) are available for this project under this Agreement. All funds must be used as specified herein.

Section 3: Eligible Uses of Funds

All funds shall be expended in accordance with applicable CDBG regulations. Furthermore, expenditure of funds shall be limited as follows:

- 1) Actual purchase price of approved buildable lots within the city limit of the City of Oberlin.
- 2) No other costs shall be eligible, unless approved in writing by the City's Program Administrator prior to the commitment of funds.

The Subrecipient shall furnish the City with an Agency Disclosure Statement from the Purchaser's Realtor and from the Seller's Realtor (where appropriate) and a Statement of Settlement Costs from the escrow agent for each transaction.

Section 4: Disbursement of Funds

The City will reimburse the Subrecipient for the cost of each lot the Subrecipient purchases pursuant to this agreement; however, in order to insure the appropriate expenditure of funds, the Subrecipient, prior to closing on a lot, shall:

- (1) provide the City with a signed copy of the Purchase Agreement and a proposed "closing statement" which reveals all debits and credits material to the transaction; and
- (2) seek the written approval of the Oberlin City Auditor to close, which approval may not be unreasonably withheld. Approval shall be sought by notification from the escrow agent to the City Auditor at least three (3) business days prior to each proposed closing, and if written disapproval is not received by the escrow agent within three (3) business days thereafter, written approval hereunder shall be conclusively presumed to have been given.

Upon closing, the City will prepare a duplicate invoice prepared by the City Auditor to be submitted, along with a copy of the Purchase Agreement, a copy of the letter from the Subrecipient requesting reimbursement, and a copy of the actual "closing statement" to the Lorain County Board of Commissioners for reimbursement to the City of Oberlin. Notwithstanding the immediately preceding sentence, the City of Oberlin shall reimburse the Subrecipient in full (based upon the "closing statement") within fifteen (15) days of each approved closing.

Section 5: Schedule

The Subrecipient anticipates beginning acquisition activities immediately upon the execution of this agreement by all parties. In no event shall the Subrecipient begin acquisition activities later than sixty days from the date of execution of this agreement.

The Subrecipient shall complete all acquisition activities on or before December 31, 2002, in order to allow for the timely expenditure of FY 2001 CDBG Formula Allocation Funds in the total amount of Thirty-one Thousand Five Hundred and 00/100 Dollars (\$31,500.00). FY 2001 CDBG Formula Allocation Funds not spent prior to December 31, 2002 shall revert to the Lorain

County Board of Commissioners for proper disposition in accordance with applicable CDBG regulations.

The Acquisition Activities shall be considered complete when all the necessary title transfer requirements are complete and the final drawdown has been disbursed.

Section 6. Displacement and Relocation

The Subrecipient shall comply with all applicable regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353.49, CFG part 24 and the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655).

If Community Development Block Grant funds are used to pay part of the costs of this project other than the general planning and administrative costs eligible under 24 CFR 570.205 and 570.206, or optional relocation costs eligible under 24 CFR 570.201 (i) (2), then the project is subject to the requirements of the Housing and Community Development Act of 1974. This includes the Section 104 (d) requirements to provide relocation assistance and replace low/moderate income housing as described at 24 CFR 570.606 (c).

Section 7: Environmental Review

The City and the Subrecipient acknowledge that, as provided in 24 CFR 92.352, the environmental effects of each activity carried out with federal funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 and the related authorities in the implementing regulations at 24 CFR parts 50 and 58.

The City hereby explicitly affirms that the responsibility for the Environmental Review Record for the activities contained in this Agreement for Services has been undertaken by the Lorain County Community Development Department for the Lorain Board of Commissioners. The Environmental Review Record has been completed for Acquisition Activities for the Oberlin Affordable Housing Project for FY 1997 and FY 1998 CDBG Formula Allocation funds. The Environmental Review Record for FY2001 CDBG Formula Allocation funds has been undertaken by the Lorain County Community Development Department. The Environmental Review Record is available to the public at 226 Middle Avenue, Elyria, OH in the offices of the Community Development Department at the Lorain County Administration Building.

Furthermore, the City explicitly affirms that an Environmental Review Record for the acquisition of real property and the construction of new homes was completed for its Community Housing Improvement Program (CHIP) FY 1996. The project review level requires an Environmental Assessment be completed. Upon the completion of the review and the development of said Environmental Review Record, the City of Oberlin received Environmental

Clearance from the Ohio Department of Development for this activity on January 24, 1997. For CHIP FY 1998, a finding of Continued Relevance for Acquisition activities has been made. This finding has been approved by the Ohio Department of Development and Environmental Clearance has been received as of December 29, 1998. For CHIP FY 2000, a finding of Continued Relevance for Acquisition activities has been made. This finding has been approved by the Ohio Department of Development and Environmental Clearance has been received as of December 27, 2000. This Environmental Clearance is necessary in order to proceed with the expenditure of funds in connection with the Community Housing Improvement Program and the proposed Affordable Housing Project. The Environmental Review Record is available to the public at 69 South Main St., Oberlin, OH in the office of the Housing Rehabilitation Specialist.

In the event that changes or modifications are necessary or required in the proposed activity after such activity has commenced or funds have been committed to the activity, the City will submit all necessary supplemental environmental review information and data as required for the purpose of updating the environmental review record. Upon receipt of written approval, notification shall be made to the Subrecipient that Environmental Conditions have been released.

Section 8: Lead-Based Paint

The Subrecipient shall comply with all federal, state and local laws and regulations regarding lead-based paint. The use of lead-based paint is prohibited.

Section 9: Flood Disaster Protection

Grant funds shall not be used for the acquisition, new construction or rehabilitation of a project located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the Subrecipient has obtained and will maintain flood insurance.

Section 10: Housing Discrimination Prohibited

The Subrecipient and an entity or agency acting on its behalf shall not exclude from participation in, deny benefits to or discriminate against any applicant for or participant in the services or housing to be provided pursuant to this Agreement because of race, color, national origin, religion, sex, age, handicap, ancestry or Vietnam-era or disabled veteran status. The Subrecipient and any entity or agency acting on its behalf shall, as applicable, comply with the following: (a) the Fair Housing Act, 42 U.S.C. 3601 20, and implementing regulations at 24 CFR part 1 00; (b) Executive Order 1 063, as amended by Executive Order 12259, regarding Equal Opportunity in Housing and implementing regulations at 24 CFR part 107; (c) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, regarding Nondiscrimination in Federally Assisted Programs, and implementing regulations at 24 CFR part 1; (d) the prohibitions against

discrimination on the basis of age under the Age Discrimination Act of 1975, 42 U.S.C. 6101-07 and implementing regulation at 24 CFR part 146; (e) the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and implementing regulations at 24 CFR part 8; and (f) the Americans With Disabilities Act of 1990, 42 U.S.A. 12101-213, implementing regulations at 29 CFR part 1630 and 36 CFR part 1191.

Section 11: Accessibility Requirements

If applicable, the Subrecipient shall comply with the accessibility requirements for individuals with mobility, vision and hearing impairments provided in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and the implementing regulations at 24 CFR part 8. Generally, these provisions include a requirement that projects involving substantial alteration or new construction shall be designed and constructed so that a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. An additional two-percent of the units, but not less than one unit, shall be accessible for persons with hearing and vision impairments. These requirements are more fully explained and defined in the implementing regulations.

Section 12: Equal Employment Opportunity

A. MBE/WBE. If required by federal or state law, the Subrecipient agrees to use its best efforts to afford minority-and-women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and women-owned enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans and American Indians. The Subrecipient may rely on written representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

B. EEO. The Subrecipient shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, handicap, ancestry or Vietnam-era or disabled veteran status. The Subrecipient shall in all solicitations of advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity employer. The Subrecipient shall require that all contracts between the Subrecipient and any contractor performing work on this Project to contain language the equivalent of this section.

Section 13: Training and Employment of Project Residents

The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment in connection with planning and carrying out this project be given low income residents of the City of Oberlin and contracts for work in connections with the project be awarded to business concerns, including but not limited to individual or firms doing business in the fields of planning, consulting, design, architecture building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the City of Oberlin.

The Subrecipient shall comply with the provision of Section 3 and may refer to the regulations set forth in 24 CFR part 135 for guidance regarding the objectives of Section 3. The paragraph stated above shall be included in all contracts executed in furtherance of the Agreement.

Section 14: Federal Labor Standard Requirements

To the extent applicable to this project:

1. The Subrecipient and any of its contractors or subcontractors shall comply with HUD requirements, as outlined in 24 CFR 92.354, regarding labor standards. These HUD requirements state that any contract for the rehabilitation or construction of affordable housing with twelve (12) or more units assisted with loan funds must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. 276a to a-5, shall be paid to those contracts shall also be subject to the overtime provisions, as applicable of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-332.
2. If Community Development Block Grant funds are used to finance the construction or rehabilitation in whole or in part, the Subrecipient and any of its contractors or subcontractors shall comply with the applicable HUD requirements, as outlined in 24 CFR 570.603 for property containing eight or more units. The regulations at 24 CFR 570.603 do not apply if CDBG funds are used to finance project elements other than construction or rehabilitation.
3. The Subrecipient and any contractors or subcontractors shall comply with the Davis-Bacon and Contract Work Hours and Safety Standards Acts and any regulations issued under these Acts, including 29 CFR part 5 and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344. 1, Federal Labor Standards Compliance in Housing and Community Development Programs, as well as with the Copeland "Anti-Kick Back" Act, 18 U.S.C. 874 and the implementing regulations at 29 CFR part 3. The prevailing wage provisions do not apply to an individual who is not otherwise employed at any time in the construction work and who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the

services for which the individual volunteered. The Subrecipient shall provide appropriate wage compliance and payroll records to the City's Wage Compliance Officer. The Subrecipient shall require that the contractor through appropriate language in the contract documents to provide appropriate wage compliance and payroll records to the City's Wage Compliance Officer.

Section 15: Debarment, Suspension or Ineligibility

The Subrecipient shall not use any of the funds provided by this Agreement to employ, award contract to, or otherwise engage the services of, any contractor during any period that the contractor is debarred, suspended or ineligible under the provisions of 24 CFR part 24.

Section 16: Religious Organizations and Religious Purposes

The grant funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. The grant funds may not be used to rehabilitate or construct housing owned by primarily religious organizations or assist primarily religious organizations in acquiring housing. The real property and improvements resulting from the project must be used exclusively for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for occupants of the property.

Section 17: Conflict of Interest

In the procurement of property and services by the Subrecipient, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular No. A-110 apply. Generally, these provisions provide that the Subrecipient shall maintain a code or standard of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using Federal funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which Federal funds are used, where, to his/her knowledge, he/she or his/her immediate family, partners or organization in which he/she or his/her immediate family or partner has a financial interest or with who he/she is negotiating or has any arrangement concerning prospective employment. The Subrecipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violations of such standards by the Subrecipient's officers, employees or agents. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Subrecipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and

eliminate unfair competitive advantage, contractors that develop or draft specifications, requirement, statements of work, invitations for bids and/or request for proposals should be excluded from competing for such procurement. Awards shall be made to the bidder/offer whose bid/offer is the "lowest and best" bid/offer as that term is applied to the city. Solicitations shall clearly set forth all requirements that the bidder/offer must fulfill in order for his bid/offer to be evaluated by the Subrecipient. Any and all bids/offers may be rejected when it is in the Subrecipient's interest to do so.

In cases not governed by those provision, which cases include the acquisition and disposition of real property, 24 CFR 92.356 applies. Generally, no employee, agent, consultant, officer or elected or appointed official of the City or Subrecipient who exercises or has exercised any functions or responsibilities with respect to any activities that are in any way connected with this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to those activities, may obtain a financial interest or benefit from those activities, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter, and the Subrecipient shall take appropriate steps to assure compliance.

Section 18: Organization and Authorization

The Subrecipient warrants that it is a duly organized non-profit corporation and in good standing under the laws of the State of Ohio and the County of Lorain and has the power to carry on its business as it is presently being conducted, and to enter into and observe the provisions of this Agreement. The Subrecipient further warrants that the entering into and performance of this Agreement has been duly authorized by all necessary corporate action and will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect and having applicability to the Subrecipient or any provision of the Subrecipient Articles of Incorporation, Regulations or By-laws, and/or result in a breach of or constitute a default under any indenture, bank loan, credit agreement or any other agreement or instrument to which the Subrecipient is a party or by which it or its property may be bound or affected. The Subrecipient shall deliver to the City a copy of the corporate resolution or other documents that clearly show that the person or persons who sign on behalf of the Subrecipient have the authority to sign and bind the Subrecipient to the terms of the Agreement.

Section 19: Maintain Existence

The Subrecipient agrees to maintain its corporate or partnership existence, rights, privileges and franchises within the State of Ohio in full force and effect. The Subrecipient shall maintain a standard and modern system of accounting principles. The Subrecipient shall notify the city of any material change in the ownership, structure, control or operation of the Subrecipient including, without limitation, (i) merger into or consolidation with any other persons or business entities; (ii) changing the nature of its business as carried on as of the date it signs this Agreement;

or (iii) substantial distribution, liquidation, encumbrance or other disposal of the Subrecipient's assets.

Section 20: Uniform Administrative Requirements

During the performance of this Agreement, the Subrecipient shall comply with the uniform administrative requirements stipulated in the Office of Management and Budget, OMB Circular A-122 "Cost Principles for Non-Profit Organization."

Section 21: Payment of Taxes

The Subrecipient shall duly pay and discharge all taxes, assessments and governmental charges levied upon it or against its properties prior to the date on which penalties would attach, except that the Subrecipient shall not be required to pay any tax, assessment or governmental charge which is being contested by it in good faith and by appropriate and timely proceedings, provided that the Subrecipient provides prior written notice to the City of that contest and proceeding.

Section 22: Payment of Fees

The Subrecipient shall pay all authorized third party fees, expenses and charges incurred with respect to these funds in accordance with Section 3 of this Agreement.

Section 23: Limitation of City Liability

The Subrecipient acknowledges that the City shall not be liable to the Subrecipient for completion of, or the failure to complete, any activities which are a part of the project.

Section 24: Indemnification

The Subrecipient agrees to indemnify, defend and save harmless the City against all liability, claims, demands, losses, damages and costs arising from any act or omission by, or negligence of, the Subrecipient or its officers, agents, or employees including all contractors and subcontractors engaged by the Subrecipient while engaged in the performance of this Agreement.

Section 25: Reporting, Records and Right to Inspect

The Subrecipient shall comply with the City's request for reports concerning the matters covered by this Agreement, including, but not limited to, any reports regarding the leases with tenants, the affordable housing requirements, the tenant and participant protection, the affirmative marketing requirements. The property standards are maintenance requirements and identification, demographic and income information regarding the occupants of the units in the real property and improvements resulting from the project.

The Subrecipient shall keep and maintain books, records, and other documents relating directly to all matters covered by this Agreement, including its receipt and disbursement of the loan funds and the requirements regarding affordability and tenant protection. Except as otherwise authorized, these items shall be maintained for a period of three (3) years after receipt of the final disbursement under this Agreement. Any required annual reports or documentation shall be maintained for a period of three (3) years from the date of the termination of this Agreement.

Any duly authorized representative of the Secretary of the United States Department of Housing and Urban Development and/or the Comptroller General of the United States and/or the City shall at all reasonable times have access to and the right to inspect, copy, audit and examine all of these books, records and other documents relating directly to its receipt and disbursement of the loan funds and other matters covered by this Agreement until the completion of all terms.

The Subrecipient shall furnish to HUD or to the City as reasonably requested in a form that is reasonable, statements, records, data and information pertaining to matters covered by this Agreement.

Section 26: Finding Confidential

All of the records, information, data, reports, etc., prepared or assembled by the Subrecipient under this Agreement containing confidential information about any potential, current or former housing occupant is private and the Subrecipient does covenant and agree that those items shall not be made available to any individual or organization, other than an agency of the United States Government, without the prior written approval of the City, with written consent obtained directly from the Subrecipient or the potential, current or former housing occupant.

Section 27: Access to the Project

Any duly authorized representative of the Secretary of HUD and/or the City shall have access at all reasonable times to any portion of the project site until the terms of the Agreement have been complied with and fulfilled.

Section 28: Transfer of Ownership of Project

Under all circumstances, including those that may be acknowledged by the City at the time this Agreement is signed by the Subrecipient, the Subrecipient shall not transfer any interest in the Project site, including the real property and improvements, without first notifying the City and receiving its written approval. This prohibition shall not be applicable regarding resales of individual homes to third parties by Subrecipient for which Subrecipient is to receive its developer's fees.

Section 29: Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Subrecipient and the City. When used in the Agreement, the terms "City" and "Subrecipient" shall include any successors and permitted assigns, or any permitted entity designated by either party to carry out the obligations of that party regarding the project. This includes any entity, which may assume ownership of the project site.

Section 30: Amendments

This Agreement shall only be amended by written agreement signed by all parties and approved by Oberlin City Council.

Section 31: Severability

If any section of this Agreement is found to be illegal, unconstitutional, improper or unenforceable, said section shall not affect the enforceability of the remainder of this Agreement, it being the intent of the parties that the provisions of this agreement be severable.

Section 32: Jurisdiction

This Agreement shall be construed in accordance with the provisions of Ohio law.

Section 33: Termination Clause

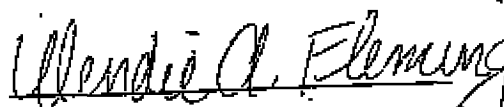
This Agreement may be terminated by either party with the provision of thirty (30) days written notification.

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

Signed in the presence of:

CITY OF OBERLIN


Robert DiSpirito, City Manager

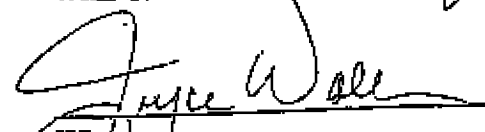

Witness


Witness

NEW SUNRISE PROPERTIES, INC.


Melva Tolbert, Executive Director


Witness


Witness

Approved as to form:


Eric R. Severs, City Solicitor