



MILPITAS PLANNING COMMISSION AGENDA REPORT

Meeting Date January 14, 2009

PUBLIC HEARING

APPLICATION: **SITE DEVELOPMENT PERMIT AMENDMENT NO. SA09-0001 AND MINOR TENTATIVE MAP AMENDMENT NO. MM09-0001, ASPEN FAMILY APARTMENTS**

APPLICATION SUMMARY: A request to amend Site Development Permit Conditions of Approval No. 7, 42, 43, 44, and 45 and Minor Tentative Map Conditions No. 16 and 17 to provide consistency with the Owner’s Participation Agreement dated April 17, 2007.

LOCATION: 1666 South Main Street, (APN: 086-22-023)
APPLICANT & OWNER: Global Premier, 5 Park Plaza, Suite 980, Irvine, CA 92614

RECOMMENDATION: **Staff recommends that the Planning Commission:**
1. Close the public hearing; and
2. Adopt Resolution NO. 09-005 recommending approval of Site Development Permit Amendment No. SA09-0001 and Minor Tentative Map Amendment NO. MM09-0001

PROJECT DATA:
General Plan/
Zoning Designation: Multi-Family Very High Density /Multi-Family Very High Density (R4)
Overlay District: Site and Architectural
Specific Plan: Midtown

Site Area: 2.69 acres

CEQA Determination: Exempt

PLANNER: Cindy Hom, Assistant Planner

PJ: 3199

- ATTACHMENTS:**
- A. Resolution/Conditions of Approval**
 - B. Owner’s Participation Agreement dated April 17, 2007**
 - C. Original Conditions of Approval with strikethrough changes**
 - D. April 17, 2007 City Council Agenda Summary Report and Resolution No. RA281**

LOCATION MAP



No scale

BACKGROUND

In March 2007, the Planning Commission approved Site Development Permit No. SZ2007-1, Conditional Use Permit No. UP2006-22, and Minor Tentative Map No. MI2007-2 for the construction of the Aspen Family Residential Project that consists of 101-unit affordable apartments and installation of related site improvements.

On April 17, 2007, the Milpitas Redevelopment Agency (Agency) and the City Council adopted resolution approving the execution of an Owner's Participation Agreement (OPA) that sets out in detail the terms and obligations of the Agency and the developer for the long term affordable units. In summary, the OPA commits \$2.3 million in affordable housing funds for the project. The proceeds of the Agency loan would be used to pay the City's development impact fees assessed for the project. Per the OPA the City agrees that the developer may defer the payment of the impact fees until the later of (i) date of the issuance of a final certificate of occupancy for the project, (ii) the closing of the conventional permanent loan for the project, but in no event later than twenty-four (24) months following issuance of the final certificate of occupancy.

The purpose of this proposed amendment is to revise conditions related to the payment of City impact fees, imposed via the Site Development Permit and Minor Tentative Map approvals, to be consistent with the terms and obligations of the OPA (Attachment B). Attached with this staff report is a copy of the original conditions of approval with strikethrough changes that reflect the proposed revisions (Attachment C and D). Per Special Condition No. 1 of both the Minor Tentative Map and Site Development Permit and the subdivision provisions of the Milpitas Municipal Code, the proposed modifications to the conditions require Planning Commission review and approval. Nonetheless, Staff believes that these changes are mere "clean up" or administrative updates to effectuate the Agency Board and City Council desire expressed in the OPA.

PROJECT DESCRIPTION

The project site is situated on a 2.69-acre site located at 1666 S. Main Street. The development includes three four-story buildings and underground parking garages that provides for 101 affordable units for low and very low-income households. The development also provides various site improvements that include on-site landscaping, Main Street streetscape improvements, and two new public streets. The project is currently under construction and is nearing completion.

The site is located in an area of transitional land uses. On the north side of the site are two existing multi-tenant commercial/industrial buildings and the future site of a high-density residential project. To the east is a rail line and, beyond, are industrial properties. South of the site is an existing mini-storage complex. East of the site is South Main Street and single-family homes. A vicinity map of the subject site location is included on the previous page.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan, Midtown Specific Plan, and Zoning Ordinance

The project remains consistent with the provisions of the General Plan, Midtown Specific Plan and Zoning Ordinance in which there are no changes to site development plans and conditional use permit as approved.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically exempt from further environmental review pursuant to the Section 15061(b)3 (Review for Exemption) of the California Environmental Quality Act. The project is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Since the project entails revisions to approved special conditions of approval to reflect the term of the OPA and does not propose any site modifications, the project is not subject to CEQA.

CONCLUSION

The project entails amendment to the approved conditions of approval that does not involve any changes to the use or the existing site development. The purpose of the amendment is to provide consistency with the terms of the OPA. The project as proposed remains consistent with the General Plan and the Zoning Ordinance.

RECOMMENDATION

STAFF RECOMMENDS the Planning Commission adopt Resolution No.09-005 approving Site Development Permit Amendment No. SA09-0001 and Minor Tentative Map Amendment No. MM09-0001, Aspen Family Apartments, subject to the conditions of approval.

Attachments:

- A. Resolution
- B. Owner's Participation Agreement dated April 17, 2007
- C. Original Site Development Conditions of Approval with strikethrough changes
- D. Original Minor Tentative Map Conditions of Approval with strikethrough changes
- E. April 17, 2007 City Council Agenda Summary Report and Resolution No. RA281

RESOLUTION NO. 09-005

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING SITE DEVELOPMENT PERMIT AMENDMENT NO. SA09-0001, AND MINOR TENTATIVE MAP AMENDMENT NO. MM09-0001, ASPEN FAMILY APARTMENTS, LOCATED AT 1666 SOUTH MAIN STREET

WHEREAS, the Aspen Family Apartments project was originally approved by the Planning Commission on March 14, 2007 (SZ2007-0001 and UP2006-0022) and March 28, 2007 (MM2007-0002), and later given amended approvals on May 23, 2007 (SA2007-0018 and MM2007-0002) and on February 13, 2008 (SA08-0002); and

WHEREAS, on April 17, 2007, the Milpitas Redevelopment Agency Board of Directors adopted Resolution No. RA281, approving the execution of an Owner Participation and Loan Agreement By and Between the Redevelopment Agency of the City of Milpitas and MIL Aspen Associates (OPA), that specifies in detail the terms and obligations of the Redevelopment Agency (Agency) and the developer for the long term affordable units provided in the Aspen Family Apartments development. In pertinent part, the OPA outlines the timing and manner of the payment of City developer impact fees and exactions and other administrative requirements; and

WHEREAS, now, the developer has submitted an application to amend some of the previously imposed Site Development Permit Conditions of Approval and Minor Tentative Map Conditions in order to make such provisions consistent with the OPA; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and California Environmental Quality Act (CEQA) Guidelines and concluded that the project is statutorily and categorically exempt from the requirements of the California Environmental Quality Act (“CEQA”); and

WHEREAS, on January 14, 2009, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The proposed activity and amendment are statutorily and categorically exempt from the requirements of the California Environmental Quality Act (“CEQA”) because the setting, modification, or imposition of development impact fees merely establishes a funding mechanism for the provision of future projects, and as such, the fees are not an essential step

culminating in action which may affect the environment and environmental review required under CEQA will be performed when projects funded by the development impact fees are chosen and defined. (CEQA Guidelines § 15378; *Kaufman & Broad South Bay, Inc. v. Morgan Hill* (1993) 9 Cal.App.4th 464). Furthermore, the project is statutorily exempt under CEQA Guideline § 15061(b)(3) (no possibility that the activity in question may have a significant effect on the environment), since the proposed amendments merely entails the harmonization of development conditions with the fiscal and administrative terms of an OPA and that do not propose any site modifications.

Section 3: The proposed amendment to conditions of approval are consistent with the provisions of the Milpitas General Plan, Midtown Specific Plan and the Zoning Ordinance in that there are no physical changes to site development plans that affect the density, development standards, architecture, Midtown design standards, or use of the project site.

Section 4: The Planning Commission of the City of Milpitas hereby approves Site Development Permit Amendment No. SA09-0001 and Minor Tentative Map Amendment No. MM09-0001, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1 and Exhibit 2.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 14, 2009.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on July 9, 2008, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	OTHER
Cliff Williams			
Lawrence Ciardella			
Alexander Galang			
Sudhir Mandal			
Gurdev Sandhu			
Noella Tabladillo			
Aslam Ali			

EXHIBIT 1

**AMENDED CONDITIONS OF APPROVAL
ASPEN FAMILY APARTMENTS**

“S” Zone No. SZ2007-0001, Use Permit No. UP2006-0022
and Tentative Map No. MI2007-0002

Amended by: SA2007-0018, MM2007-0002, SA08-0002, PR08-0003, SA008-0017, &
SD09-0001

1. **“S” Zone Approval:** This “S” Zone Approval No. SZ2007-1 is for a multifamily residential development for 101 affordable family apartments and associated site improvements in accordance with the plans approved on March 14, 2007, and as amended by the conditions below. Any modification to the project as approved will require an “S” Zone Amendment by the Planning Commission. Minor modifications can be submitted to the Planning Division for processing as per Section 42.10 of the zoning code. (P)
2. **Use Permit Approval:** This Use Permit No. UP2006-0022 is for:
 - a. Reduce the required number of parking spaces by 20 for residents and 16 for guests.
 - b. Credit on-street parking spaces adjacent to the development as guest parking.
 - c. Modify required building setbacks from public streets.Any modification to the above exceptions will require approval of a Use Permit Amendment by the Planning Commission. (P)
3. **Parking:** Prior to certificate of occupancy issuance, the applicant shall submit a copy of a lease agreement that requires a statement for each unit rented that limits the number of parking spaces provided per unit and shall submit a copy to the City. (P)
4. **Legal compliance:** This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations, and in conformance with the approved plans. (P)
5. **Asbestos:** Prior to any demolition or removal of any structures onsite, the applicant submit the asbestos survey and if asbestos-containing materials are present, the materials shall be abated by a certified asbestos abatement contractor in accordance with the regulations and notification requirements of the Bay Area Air Quality Management District. (P)
6. **Lead:** Prior to building permit issuance, the applicant shall submit documentation of the removal of all lead contamination and a “Notice of Completion” letter from the Department of Toxic Substance Control. (P)
7. **Park Fee:** The applicant shall pay a park-in-lieu fee based on the latest Fair Market Appraisal (March 2007) and with credit for private open space pursuant to the term in the Owner’s Participation Agreement dated April 17, 2007. (P)

8. **Private Job Account:** If at the time of application for building permit and for occupancy permit, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
9. **Noise and Vibration:** Prior to building permit issuance, a detailed analysis of railroad noise and vibrations must be submitted and recommended mitigation measures incorporated in the project plans. (P)
10. **Signs:** Prior to occupancy permit issuance, the project sign program must be approved by the Planning Commission. (P)
11. **Solid Waste:** The trash/recycling chutes, bins and enclosure areas shall be kept clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)
12. **Landscape Irrigation:** Prior to building permit issuance, the applicant shall submit an irrigation plan for all landscape areas. The irrigation plan shall show that all landscape areas, including planter areas and containerized planters, will have an automatic, self-watering system installed that is serviced by a sprinkler head or drip system equipped with a moisture sensor. (P)
13. **Landscaping:** Prior to issuance of an occupancy permit, the required landscaping shall be planted and in place. (P, C.3 Standard Condition No. 4)
14. **Landscaping:** All required landscaping shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. Proper maintenance of landscaping requires minimal pesticide use and shall be the responsibility of property owner in perpetuity. The pest reducing landscape maintenance techniques listed in the “Fact Sheet on Landscape Maintenance Techniques for Pest Reduction” in the City of Milpitas *Stormwater C.3 Guidebook*, are incorporated by reference into this condition. (P, C.3 Standard Condition No. 7)
15. **Landscaping:** City Planning staff shall have approval authority for the installation of comparable substitute pest-resistant plant materials to satisfy the requirements of the approved landscape plan when the approved plants and materials are unavailable for installation, or when other unforeseen conditions prevent the exact implementation of the landscape plan. (P, C.3 Standard Condition No.6)
16. **Decorative Surfaces:** Prior to building permit issuance, applicant shall add decorative elements (i.e., pavers or tile accents) to plans for private walkways and planter areas, to the approval of the Planning Division. (P)
17. **Building Features:** Prior to building permit issuance, applicant shall revise building elevations to include:
 - a. Windows recessed four inches (per Midtown Specific Plan Guidelines).
 - b. Roof downspouts draining to landscape areas to the greatest extent possible.
 - c. Covered bicycle parking. (P)
18. **Screening:** On-site utility transformers, boxes, etc. shall be placed underground (subsurface vaults) or be located at the rear of the property and screened from public view in a manner to the approval of the Planning Division. (P)

- 19. Emergency Access Gates:** Prior to building permit issuance, the applicant shall provide plans for emergency access gates to the approval of the Fire and Planning Departments. (P)
- 20. Stormwater:** Prior to building permit issuance, permit plans shall incorporate the following BMP'S for post construction storm water impacts: (P)
- Labeling and maintenance (annual inspections) of storm drain facilities;
 - Storm drain inlet cleaning on an annual basis;
 - Street sweeping.
- 21. Vector Control:** Prior to any construction or grading of the site, a vector control plan shall be submitted to and approved by the City. (P)
- 22. Air Quality:** Prior to building permit issuance, permit plans shall implement the following Best Management Practices (BMP's) at all project construction sites: (P, MM AQ-1)
- Water all active construction areas;
 - Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard;
 - Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking and staging areas;
 - Sweep daily;
 - Hydro seed or apply non-toxic soil stabilizers to inactive construction areas;
 - Enclose, water or apply non-toxic soil binders to exposed stockpiles;
 - Limit traffic speeds on unpaved roads to 15 miles per hour;
 - Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
 - Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts. (P)
- 23. Construction Noise:** During construction, the applicant shall implement the following measures to reduce construction noise: (P)
- Construction shall be allowed for the hours of 6:00AM to 7:00PM daily, Monday through Sunday, with no noise generating construction on holidays. This provision is in effect until December 31, 2008.
 - Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.
 - Utilize quiet models of air compressors and other stationary noise sources where the technology exists.
 - Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
 - Prohibit unnecessary idling of internal combustion engines.
 - Prior to issuance of a building permit, designate a noise disturbance coordinator who will be responsible for responding to any local complaints about construction noise. During construction, the coordinator will determine the cause of the noise complaints and institute reasonable measures to correct the problem. Maintain during all construction a conspicuously posted telephone number for the public to call the coordinator at the construction site. (P)

24. Air Quality: Prior to any permit issuance, incorporate into building plans appropriate Bay Area Air Quality Management District (BAAQMD) Best Management Practices (BMP's) to reduce vehicle trips as identified in the Summary of Impacts and Mitigation Measures (Section 1.2 of the DEIR and FEIR, Subsection "Air Quality", MM "Regional Development Impacts" for commercial development). Possible measures are (P, MM AQ-2):

- a. Provide physical improvements such as sidewalks, landscaping and bicycle parking that will act as incentives for pedestrian and bicycle modes of travel;
- b. Connect the site with regional bikeway and pedestrian trail systems;
- c. Provide a transit information kiosk;
- d. Provide showers and lockers for employees bicycling or walking to work;
- e. Provide secure and conveniently located bicycle parking and storage for workers and patrons;
- f. Provide electric vehicle charging facilities;
- g. Provide preferential parking for Low Emission Vehicles;
- h. Use specialty equipment (utility carts, forklifts, etc.) that are electrically, CNG or propane powered;
- i. Use reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand. (P)

25. Biology: Appropriately timed surveys shall be conducted by a qualified botanist according to protocols acceptable to the U.S. Fish and Wildlife Service and the California Department of Fish and Game (CDFG), to determine the presence and/or absence of special status plant species. If presence is detected, notification and appropriate protocols for relocation and/or mitigation and monitoring plan, to the approval of the City, for the plant species shall be prepared for long-term protection. The plan shall be implemented either before or concurrently with ground disturbing activities on the property. (P)

26. Biology and Hydrology: The applicant shall modify the existing Stormwater Pollution Protection Plan (SWPPP). This plan shall include provisions to minimize on-site and off-site impacts to biological resources and water quality resulting from project related runoff. Measures shall include the following: (P)

- a. The use of silt fencing, fiber rolls, sediment basins, and other measures to reduce the movement of construction-related sediments into Penitencia Creek and other sensitive habitats.
- b. Installation of grit and oil trap systems, which shall be maintained in perpetuity.
- c. Implementation of BMP's to prevent the discharge of construction debris and soils into Penitencia Creek during site clearing, grading and construction.
- d. As required, dewatering the section of creek channel surrounding the work areas associated with outfall and bridge construction. The dewatering structure shall be to the approval of the City.
- e. The applicant shall retain a construction manager familiar with NPDES permit requirements to monitor construction activities.

27. Stormwater: During all construction activities, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD: (P)

- a. Watering all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;
- b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2 feet freeboard level within their truck beds;
- c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
- e. Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets;
- f. Hydro seed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);
- g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- h. Limit traffic speeds on unpaved areas to 15 mph;
- i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- j. Plant vegetation in disturbed areas as quickly as possible; and
- k. Suspend excavation and grading (all earthmoving or other dust-producing activities) or equipment during periods of high winds when watering cannot eliminate visible dust plumes.

28. Affordability: Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 101 affordable rental-housing units (100% of total number of units) will be available at a housing cost affordable to very low and low-income households. (H)

29. Affordability: The applicant shall provide the following information in the final Owner Participation Agreement, as it relates to the number of affordable housing units, types of units (two and three bedrooms) and the income levels of the proposed affordable housing units as illustrated below. (H)

Income	No. of Units	Type of Units
Very Low and Low-Income	50 Units	Two & three bedrooms
Very Low and Low-Income	50 Units	Two & three bedrooms
Manager Unit	1 Unit	Two bedroom

30. Affordability: As part of the identified public benefit for this project, prior to occupancy, the applicant shall provide to the City of Milpitas City Council for review and approval, an dispersment plan by affordability (i.e., very low, low) exhibit illustrating the location of the affordable housing units within the development. The various levels of affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features, design and amenities. (H)

- 31. Affordability:** Income eligibility for the required number of affordable units shall be determined pursuant to the California Health and Safety Code Sections 50079.5, 50093 and 50105, which provide that the very low income limits established by the U.S. Department of Housing and Urban Development (HUD), are the stated limits for that income category. (H)
- 32. Affordability:** The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable rental units. The Restriction Agreements shall be approved to form by the Milpitas City Attorney's Office, executed by the City Manager and recorded with the County of Santa Clara. The Restriction Agreements shall require that the long-term affordability of the rental housing units shall remain in effect for the entire lifetime of the project. Any change to this requirement is subject to review and approval by the Milpitas City Council. (H)
- 33. Affordability:** The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (H)
- 34. Affordability:** The established affordable rents for the rental apartment shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the "very low" limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories and State of California Redevelopment Agency Law. The final affordable rents established for the apartment units shall not exceed the maximum allowable rents for "very low" households as defined in the above code sections. Said rents shall be approved for consistency with the definitions by the Housing Division staff. (H)
- 35. Property Management Agreement:** Prior to issuance of a building permit, the developer/property owner shall submit to City Housing Division staff, a copy of the same Property Management Agreement that is sent to the property investors defining the general maintenance and up-keep of the property. Said agreement shall also address maintenance of the Emergency Vehicle Access area. (H)
- 36. Water and Wastewater:** The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
- 37. Water, Sewer and Storm Drains:** Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity

of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)

- 38. Drainage:** At the time of grading building permit issuance, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development. (E)
- 39. Public Improvements:** Prior to any building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along South Main Street, including but not limited to curb and gutter, pavement, sidewalk, signage and striping, bus stops and bus pads, signal installation at South Main Street and Project main entrance, median installation along Main Street, street lights, street furniture installation, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the Milpitas Midtown Specific Plan and Main Street Plan Line Study, and all public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)
- 40. Underground Parking:** All proposed underground-parking structures should be designed for the additional surcharge due to traffic loading from proposed and future public streets. (E)
- 41. Community Facilities District:** Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
- 42. Traffic Impact Fee:** The developer shall contribute its "fair share" of traffic impact fee in the amount of \$22,579 (based on a Midtown impact fee of \$113 per peak hour trip and Montague Expressway impact fee of \$903 per peak hour trip) pursuant to the terms in the Owner's Participation Agreement dated April 17, 2007. (E)

- 43. Street Improvements:** The developer shall contribute \$115,092 toward its “fair share” costs of South Main Street median improvement (based on a South Main Street Median Island contribution fee of \$278.00 per peak hour trip). At City’s option, the developer may be required to construct the subject improvement in lieu of payment of contribution pursuant to the terms in the Owner’s Participation Agreement dated April 17, 2007. (E)
- 44. Fees:** The developer shall submit the following items with the building permit application and pay the related fees pursuant to the terms in the Owner’s Participation Agreement dated April 17, 2007.
- Storm water connection fee of \$45,114 based on 2.69 acres @ \$16,771 per acre. The water, sewer and treatment plant fee will be calculated at the time building plan check submittal.
 - Water Service Agreement(s) for water meter(s) and detector check(s).
 - Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
- Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)
- 45. Fees:** The developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee pursuant to the Owner’s Participation Agreement dated April 17, 2007. (E)
- 46. Tentative Map:** Prior to any building permit issuance, the developer shall submit a tentative parcel map for review and approval, and record the parcel map prior to construction of building structure above street grade. (E)
- 47. Access Easement:** Prior to building permit issuance, the developer shall either record a reciprocal easement and maintenance agreement with the adjacent property owner on the south regarding the proposed Emergency Vehicle Access (EVA) or provide a recorded document regarding the access and maintenance/installation of private utility. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to roadway, wall along railroad, drainage, lighting, landscaping, and other common area facilities. (E)
- 48. Under grounding:** Prior to building occupancy permit issuance, the developer shall underground all existing wires and remove the related poles within the proposed development, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more. All proposed utilities within the proposed development must also be under grounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state the wire voltage. (E)
- 49. Sight Distance:** The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
- 50. Easements:** Prior to any building permit issuance, the developer shall dedicate necessary easements for public street right of way, public service utilities, water, and sanitary sewer purposes. (E)

- 51. Wall:** Prior to building permit issuance, the developer shall record a 5-foot wide Private Wall Maintenance Easement (PWME), and enter into an encroachment permit agreement with the city for the maintenance of subject wall within the public right of way. The proposed wall plan needs to be included with the building site plan for review and approval. Prior to any building final inspection/occupancy permit issuance, the developer shall construct the proposed wall to the satisfaction of the Building Chief Official and Planning Department requirements. (E)
- 52. Utilities:** All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrub are permitted within City utility easements, where the easement is located within landscape areas. (E)
- 53. Wastewater:** If necessary, developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP Industrial Source Control Inspector at (408) 945-5300. (E)
- 54. Water:** Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
- 55. Solid Waste:** Prior to occupancy permit issuance, the developer shall construct solid waste enclosures to house the necessary solid waste bins. The enclosure shall be designed per the Development Guidelines for Solid Waste Services, and enclosure drains must discharge to sanitary sewer line. City review & approval of the enclosures are required prior to construction of the trash enclosures. (E)
- 56. Solid Waste:** Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
- 57. Solid Waste:** Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner or HOA shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the developer shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)

- 58. Stormwater:** The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities, which disturb one acre or greater are, viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site-monitoring plan must also be developed by the developer, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
- 59. Stormwater:** The developer shall comply with Regional Water Quality Control Board's C-3 requirements and implement the following:
- 60. At the time of building permit plan check submittal,** the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements. (E)
- 61. Stormwater: Prior to building permit issuance,** the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities. (E)
- 62. Stormwater: Prior to Final occupancy,** the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. (E)
- 63. Stormwater: Prior to building, site improvement or landscape permit issuance,** the building permit application shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMP's, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review. (E)
- 64. Stormwater: Prior to issuance of Certificate of Occupancy,** the developer shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMP's and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMP's shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the

applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (E)

65. Demolition: All utilities shall be properly disconnected before the existing building can be demolished. Show/state how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter for future use, if it is not to be used during the construction. If the existing water services will not be used for the proposed development, the service laterals shall be removed and capped at the main water line. The sanitary sewer shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. (E)

66. Landscape Irrigation: In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:

- a. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
- b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)

67. Landscape Irrigation: Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system *when available*. The developer is encouraged to design the entire landscaped area for recycled water connection. If the site is not properly designed for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (E)

68. Public Right-of-Way Work: Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)

69. Utilities: The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (E)

70. Other Approvals and Permits: It is the responsibility of the developer to obtain any necessary permits or approvals from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Transportation Agency, and City of Milpitas

Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)

- 71. Tree Removal:** Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)
- 72. Construction Monitoring:** Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personal parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)
- 73. Flood:** The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". (E)
- 74. Postal Service:** The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. (E)
- 75. Exhibit "S":** At the time of building plan check submittal, the developer shall incorporate the changes shown on Engineering Services Exhibit "S"(dated 3/5/2007) in the design plans and submit three sets of civil engineering drawings showing all proposed utilities to the Land Development Engineer for plan check. (E)

EXHIBIT 2

**AMENDED CONDITIONS OF APPROVAL
ASPEN FAMILY APARTMENTS
MINOR TENTATIVE MAP NO. MI2007-2
AMENDED BY MM09-0001**

SPECIAL CONDITIONS

1. This approval is for a Minor Tentative Parcel Map No. MI2006-4 to subdivide an existing 2.69 acre lot into three separate parcels located on 1666 S. Main Street (APN: 086-22-023) as depicted on the Tentative Parcel Map dated March 21, 2007, and as amended by the conditions of approval and for the approval of 101 affordable apartments in the three buildings within the property described on the Tentative Map. (P)
2. The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
3. If at the time of application for parcel map there is a project job account past due balance to the City for recovery of review fees, review of parcel map will not be initiated until the balance is paid in full. (P)
4. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
5. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
6. At the time of grading building permit issuance, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development. (E)
7. Prior to any Building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along South Main Street, including but not limited to curb and gutter, pavement, sidewalk, signage and striping, bus stops and bus pads, signal installation at South Main Street and Project main entrance, median installation along Main Street, street lights, street furniture installation, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the

- construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the Milpitas Midtown Specific Plan and Main Street Plan Line Study, and all public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)
8. Prior to any building permit issuance, the developer shall submit a parcel map for review and approval, and record the parcel map prior to construction of building structure above street grade. (E)
 9. The parcel map shall designate all common lots and easements as lettered lots or lettered easements. (E)
 10. Prior to parcel map recordation, the developer shall submit to the City a digital format of the parcel map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
 11. The developer shall dedicate on the parcel map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes. (E)
 12. Prior to parcel map approval, the developer shall establish a property-owner association. The property-owner association shall be responsible for the maintenance of the landscaping, walls, private streetlights, common area and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval of the City Engineer. (E)
 13. Prior parcel map approval, the developer shall either record a reciprocal easement and maintenance agreement with the adjacent property owner on the south regarding the proposed ONE-WAY in-only access or provide a recorded document regarding the access and maintenance/installation of private utility. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to roadway, wall along railroad, drainage, lighting, landscaping, and other common area facilities. (E)
 14. All proposed underground parking structures shall be designed for the additional surcharge due to traffic loading from proposed and future public streets. (E)
 15. Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
 16. Per article 3.5 of the Owner Participation and Loan Agreement between the Redevelopment Agency of the City and Mil Aspen Associates (OPA), the developer shall contribute its “fair share” of traffic impact fee in the amount of **\$22,579** in accordance with the OPA requirements (based on a Midtown impact fee of \$113 per peak hour trip and Montague Expressway impact fee of \$903 per peak hour trip). (E)
 17. Per article 3.5 of the Owner Participation and Loan Agreement between the Redevelopment Agency of the City and Mil Aspen Associates (OPA), the developer shall contribute **\$115,920** toward its “fair share” costs of South Main Street median improvement, in accordance with OPA requirements (based on a South Main Street Median Island contribution fee of \$280.00 per peak

hour trip). At City's option, the developer may be required to construct the subject improvement in lieu of payment of contribution. (E)

18. The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division:
 - a. Storm water connection fee of **\$45,114** based on 2.69 acres @ \$16,771 per acre. The water, sewer and treatment plant fee will be calculated at the time building plan check submittal.
 - b. Water Service Agreement(s) for water meter(s) and detector check(s).
 - c. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire. (E)

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).

19. Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee. (E)
20. Prior to building occupancy permit issuance, the developer shall underground all existing wires and remove the related poles within the proposed development, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more. All proposed utilities within the proposed development must also be undergrounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state the wire voltage. (E)
21. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
22. Prior to any building permit issuance, the developer shall dedicate necessary easements for public street right of way, public service utilities, water, and sanitary sewer purposes. (E)
23. Prior to building permit issuance, the developer shall record a 5-foot wide Private Wall Maintenance Easement (PWME), and enter into an encroachment permit agreement with the city for the maintenance of subject wall within the public right of way. The proposed wall plan needs to be included with the building site plan for review and approval. Prior to any building final inspection/occupancy permit issuance, the developer shall construct the proposed wall to the satisfaction of the Building Chief Official and Planning Department requirements. (E)
24. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrub are permitted within City utility easements, where the easement is located within landscape areas. (E)
25. If necessary, developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP Industrial Source Control Inspector at (408) 945-5300. (E)
26. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)

27. Prior to occupancy permit issuance, the developer shall construct solid waste enclosures to house the necessary solid waste bins. The enclosure shall be designed per the Development Guidelines for Solid Waste Services, and enclosure drains must discharge to sanitary sewer line. City review & approval of the enclosures are required prior to construction of the trash enclosures. (E)
28. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
29. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner or HOA shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the developer shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
30. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the developer, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
31. The developer shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following:
 - a. At the time of building permit plan check submittal, the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.
 - b. Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities.

- c. Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. (E)
32. Prior to building, site improvement or landscape permit issuance, the building permit applications shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review. (E)
33. Prior to issuance of Certificate of Occupancy, the developer shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMPs and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (E)
34. All utilities shall be properly disconnected before the existing building can be demolished. Show/state how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter for future use, if it is not to be used during the construction. If the existing water services will not be used for the proposed development, the service laterals shall be removed and capped at the main water line. The sanitary sewer shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. (E)
35. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:
 - a. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
 - b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)
36. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system *when available*. The developer is encouraged to design the entire landscaped area for recycled water connection. If the site is not properly designed for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (E)

37. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
38. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (E)
39. It is the responsibility of the developer to obtain any necessary permits or approvals from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
40. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)
41. Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personal parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)
42. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". (E)
43. The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. (E)
44. Make changes as noted on Engineering Services Exhibit "T"(3/22/2007) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the parcel map or improvement plans will be accepted until this condition is satisfied. (E)

ARCHITECTURAL COMMENTS

45. Applicable codes shall be 2001 CBC, CMC, 2004 CEC, CPC, 2005 California Energy Code and 2002 Milpitas Municipal Code. (B)
46. Civil Engineer licensed in the State of California shall prepare the plans. (B)
47. Allowable building area for building shall be per 2001 CBC section 504. Basic allowable building height and basic allowable building area shall be per Table 5B. (B)
48. Escape and rescue windows from each bedroom shall open directly into public street, alley, yard or exit court as per sec.310.4. (B)
49. Building that houses group A occupancy shall front directly on or discharge to a public street not less than 20 feet in width per 2001 section 303.3. The main entrance to the building shall be located on a public street or on the exit discharge. (B)

ENGINEERING

50. A soil report shall be provided when applying for grading, site improvement and building permit. (B)

- 51. Paving of driveways and parking lots shall comply with 2002 MMC section II-13-18. (B)
- 52. Proposed paving shall comply with the 2002 Milpitas Municipal Code section II-13-18. (B)
- 53. All non-structural concrete flat work shall be as per 2002 Milpitas Municipal Code, section II-13-17.05. (B)
- 54. Erosion control plan shall be submitted when applying for grading permit per 2002 Milpitas Municipal Code. (B)
- 55. Prior to issuance of building permit, all the easements including private storm drain easement through adjacent parcels shall be recorded. The developer shall include interim erosion control provisions and schedules in the construction plans for areas, which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained through the rainy season. 2002 Milpitas Municipal Code section II-13-11. (B)

ELECTRICAL

- 56. All new electrical services shall be underground per 2002 Milpitas Municipal Code section II-6-2.04. (B)

PLUMBING

- 57. All water piping shall not be located in or under concrete slab within the building as per MMC section II-7-2.02. (B)
- 58. Submitted drawings are not reviewed nor approved for fire permits and construction. These notes are provided to assist with the Fire Department permit process. (F)
- 59. Pubic street transition to the private EVA (Emergency Vehicle Access) easement located at the south side of the project shall meet the requirements for the Land Development Division and the Fire Department. (F)
- 60. Stairs and EVA modifications at the southeast corner of the project shall meet the requirements of the Land Development Division and the Fire Department. (F)
- 61. Utilities required for fire protection will be reviewed as part of the public improvements review. (F)

OWNER PARTICIPATION AND LOAN AGREEMENT

by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

**MIL ASPEN ASSOCIATES,
A CALIFORNIA LIMITED PARTNERSHIP**

April 17, 2007

Exhibits

- A Legal Description of Property
- B Form of Memorandum of Owner Participation Agreement
- C Form of Certificate of Completion
- D Form of Regulatory Agreement
- E Form of Promissory Note
- F Form of Deed of Trust
- G Financing Plan
- H Form of Option and Right of First Refusal Agreement
- I Form of Memorandum of Option and Right of First Refusal Agreement

THIS OWNER PARTICIPATION AND LOAN AGREEMENT (this "Agreement") is entered into effective as of April 17, 2007 ("Effective Date") by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate, and politic ("Agency") and MIL Aspen Associates, A California Limited Partnership, a California limited partnership ("Developer"). Agency and Developer are hereinafter collectively referred to as the "Parties."

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) ("CRL"), the Agency has responsibility to implement the redevelopment plan adopted in 1976 by the City Council of the City of Milpitas ("City Council") by Ordinance No. 192 (as subsequently amended, the "Redevelopment Plan") for the Milpitas Redevelopment Project Area No. 1 (the "Project Area").

B. Developer is the owner of, or has the contractual right to purchase, the real property located in the City of Milpitas ("City") at 1666 South Main Street, known as Santa Clara County Assessor's Parcel No. 086-22-023, and more particularly described in Exhibit A attached hereto (the "Property"). The Property is located within the Project Area and within the area governed by the Midtown Specific Plan (the "Specific Plan"). Developer has proposed to develop a multifamily residential project (the "Project") consisting of one hundred and one (101) units, one hundred (100) of which will be rented at affordable housing cost to very low-income households as more particularly described herein and in an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants to be recorded against the Property.

C. Developer has requested, and Agency has agreed, to provide a loan (the "Loan") pursuant to the terms and conditions set forth herein for the purpose of providing partial financing for the Project.

D. The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the development of the Property as more particularly set forth herein. The Agency has determined that (i) development of the Property pursuant to this Agreement is consistent with the Specific Plan, the Redevelopment Plan and the Implementation Plan for the Project Area, will be of benefit to the Project Area, and will further the goals of the Redevelopment Plan by providing affordable housing in the Project Area, and (ii) the Loan is necessary to make the Project economically feasible and affordable to very low-income households.

E. A material inducement to Agency to enter into this Agreement is the agreement by Developer to develop the Property within the time periods specified herein and in accordance with the provisions hereof, and the Agency would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to complete the Project in accordance with such provisions and within such time periods.

F. Concurrently herewith: (i) Developer shall execute a secured promissory note (“**Note**”) in the amount of the Loan and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) which shall provide Agency with a security interest in the Property and the Project, (ii) Developer and Agency shall execute an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (“**Regulatory Agreement**”) which shall require Project rents to be affordable to very low-income households for a term of not less than 55 years, and (iii) Developer and Agency shall enter into an Option and Right of First Refusal Agreement (the “**Option Agreement**”) pursuant to which Agency shall have the right to acquire the Property and the Project following expiration of the low-income tax credit compliance period. This Agreement, the Note, the Deed of Trust, the Regulatory Agreement, and the Option Agreement are collectively hereinafter referred to as the “**Agency Documents**.”

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS

1. **Definitions.** The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

- 1.1 “**Agency Documents**” is defined in Recital F.
- 1.2 “**Certificate of Completion**” is defined in Section 3.15.
- 1.3 “**Claims**” is defined in Section 3.17.
- 1.4 “**Conditions of Approval**” is defined in Section 3.2.
- 1.5 “**Construction Plans**” is defined in Section 3.11.
- 1.6 “**Environmental Laws**” is defined in Section 8.4.
- 1.7 “**Hazardous Materials**” is defined in Section 8.3.
- 1.8 “**Improvements**” is defined in Section 3.9.
- 1.9 “**Indemnitees**” is defined in Section 3.17.
- 1.10 “**Permitted Exceptions**” is defined in Section 4.6.
- 1.11 “**Project**” is defined in Recital B and further described in Section 3.2.

1.12 "Regulatory Agreement" is defined in Section 3.3.

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE AND TERM

2.1 Developer's Representations. Developer represents and warrants to Agency as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Developer shall immediately give written notice of such fact or condition to Agency. Developer acknowledges that Agency shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of Agency.

(i) Authority: General Partner. Developer is a limited partnership duly organized and in good standing under the laws of the State of California. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. Developer's managing general partner is a corporation duly organized and good standing under the laws of the State of California. Developer's administrative general partner is a limited liability company duly organized and in good standing under the laws of the State of California, and has been duly authorized to execute the Agency Documents. This Agreement and the other Agency Documents constitute valid and binding obligations of Developer.

(ii) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(iv) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or insolvency proceeding.

2.2 Agency Representations. Agency represents and warrants to Developer as follows, and Agency covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, Agency shall immediately give written notice of such fact or condition to Developer. Agency acknowledges that Developer shall rely upon Agency's representations made herein notwithstanding any investigation made by or on behalf of Developer.

(i) Authority. Agency is a public entity duly organized and in good standing under the laws of the State of California. Agency has the full right, power and authority to undertake all obligations of Agency as provided herein, and the execution, performance and delivery of this Agreement by Agency have been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Agency have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Agency.

(ii) No Conflict. Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Agency to perform its obligations under this Agreement.

(iv) No Bankruptcy. Agency is not the subject of a bankruptcy or insolvency proceeding.

2.3 Effective Date; Memorandum. The obligations of Developer and Agency hereunder shall be effective as of the Effective Date. Concurrently with the execution of this Agreement, the Parties shall execute a Memorandum of this Agreement substantially in the form attached hereto as Exhibit B which shall be recorded in the Official Records of Santa Clara County ("**Official Records**") on the date that Developer acquires the Property.

ARTICLE III

DEVELOPMENT OF THE PROJECT

3.1 The Property. Developer represents and warrants that as of the Effective Date:
(i) Developer possesses or has the contractual right to acquire fee simple title to the Property, and
(ii) to the best knowledge of Developer after reasonable inquiry, the Property is subject to no covenant, condition, restriction or agreement that would prevent the construction of the Project on the Property in accordance with this Agreement. If at any time the foregoing statements become untrue, the Agency shall have the right to terminate this Agreement upon written notice to Developer. In the event that Developer does not acquire fee simple title to the Property by June 30, 2007, this Agreement shall terminate and be of no further force or effect.

3.2 Scope of Development. Developer shall develop the Project on the Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures

counsel approved by Agency) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that Agency and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or Developer's deposit with Agency of any of the insurance policies described in this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

3.15 Certificate of Completion for Project. Promptly after completion of construction of the Project, issuance of a final Certificate of Occupancy by the City and the written request of Developer, the Agency will provide an instrument ("**Certificate of Completion**") so certifying, provided that at the time such certificate is requested all components of the Project have been completed. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the development of the Property.

The Certificate of Completion shall be issued substantially in the form attached hereto as Exhibit C, and at Developer's option, shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement, including without limitation, Developer's obligations pursuant to the Regulatory Agreement.

3.16 Equal Opportunity. During the construction of the Project, there shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

3.17 Prevailing Wage Requirements. To the full extent required by all applicable state and federal laws, rules and regulations, Developer and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. Developer shall submit to Agency a plan for monitoring payment of prevailing wages and shall implement such plan at Developer's expense.

Developer shall indemnify, defend (with counsel approved by Agency) and hold the Agency, the City, and their respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of

and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”).

The Project consists of the following: (i) the design, development and construction on the Property of a 101-unit multifamily residential project, together with 205 parking spaces of which 185 spaces will be constructed in a subterranean structure, and related improvements including the following: sidewalk frontage and street improvements consistent with the City’s South Main Street Plan Line Study, including the installation of sidewalks, streetlights, trees & planting materials, median islands, irrigation and electrical enhancements, and streetscape furniture installation.

3.3 Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that 100 of the residential units developed within the Project shall be rented at an affordable cost to households of very low-income in accordance with the terms hereof and the Regulatory Agreement which the Parties shall execute substantially in the form attached hereto as Exhibit D concurrently with the execution of this Agreement, and which shall be recorded in the Official Records on the date that Developer acquires the Property.

3.4 Project Approvals. Developer acknowledges and agrees that execution of this Agreement by Agency does not constitute approval for the purpose of the issuance of building permits for the construction of the Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to obtain all necessary entitlements, approvals, and permits for the construction of the Project, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review of the Project pursuant to CEQA.

Developer covenants that it shall: (i) obtain all necessary permits and approvals which may be required by Agency, City, or any other governmental agency having jurisdiction over the construction of the Project or the development of the Property, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures imposed in connection with any environmental review of the Project, and (iv) not commence construction of the Project prior to issuance of building permits.

3.5 Fees. ~~Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project or the development of the Property. Notwithstanding the foregoing, pursuant to that certain Memorandum of Understanding dated as of April 3, 2007, and executed by and among the Developer, the Agency and the City, the City has agreed: (a) to permit Developer to defer payment of impact fees payable to the City for the Project until the later of (i) the date of issuance of a final certificate of occupancy for the Project, or (ii) the closing of the conventional permanent loan for the Project, but in no event later than twenty-four (24) months following issuance of the final certificate of occupancy for the Project, and (b) that if all~~

~~conditions to disbursement of the Loan proceeds have been satisfied, but Agency fails to fully fund the Loan, Developer's obligation to pay impact fees will be reduced by the amount that the Agency fails to fund.~~

3.6 Development Schedule. Developer shall commence and complete construction of the Project and shall satisfy all other obligations of Developer under this Agreement within the time periods set forth herein, as such time periods may be extended upon the mutual written consent of the Parties. Developer shall commence construction of the Project within ninety (90) days following issuance of building permits for the Project, and in no event more than six (6) months following the Effective Date, and shall diligently prosecute to completion the construction of the Project in order to allow City to issue a final certificate of occupancy for the Project by December 31, 2008; provided however, a 12-month extension of such date shall be permitted if approved by the Project construction lender and the California Tax Credit Allocation Committee (TCAC). If Developer fails to commence or complete construction of the Project in accordance with the foregoing, Agency shall have the right, at its option, to terminate this Agreement, and shall have no obligation to fund the Loan.

3.7 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Property, the design, development and construction of the Project and compliance with the Conditions of Approval, including without limitation the installation and construction of all off-site or on-site improvements required by City in connection therewith, and none of such costs and expenses shall be the obligation of the Agency or the City.

3.8 Rights of Access. For the purpose of ensuring that the Project is developed in compliance with this Agreement, Developer shall permit representatives of the Agency and the City to enter upon the Property to inspect the Project following 24-hours' written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided).

3.9 Agency Disclaimer. Developer acknowledges that the Agency and City are under no obligation, and neither Agency nor City undertakes or assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the Agency or the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the Agency or the City as to the quality of the design or construction of the improvements constructed on the Property ("Improvements") or otherwise.

3.10 Financing Plan. As set forth in the attached as Exhibit H, Developer has provided Agency with a financing plan for the Project ("Financing Plan") which describes: (i) the

estimated costs of Project development, including without limitation acquisition costs and hard and soft construction costs, (ii) an operating pro forma which describes projected revenue and expenses for the Project, (iii) all sources of funding for construction and permanent financing, and (iv) evidence that all such funds have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions. By its execution of this Agreement, Agency hereby approves the Financing Plan.

3.11 Construction Plans. Developer shall submit to City's Building Department detailed construction plans for the Project (the "**Construction Plans**"). As used herein "**Construction Plans**" mean all construction documents upon which Developer and Developer's contractors shall rely in building the Project and developing the Property (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the development approvals issued by the Agency and the City for the Project, and shall not materially deviate therefrom without the express written consent of Agency and City. Provided that the Construction Plans are consistent with the requirements of this Agreement, approval of the Construction Plans by City shall be deemed approval thereof by Agency.

3.12 Construction Pursuant to Plans. Developer shall construct the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City and/or the Agency pertaining to development of the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

3.13 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the Agency and City for their written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by Agency or City after the Effective Date. Unless a proposed change is approved by Agency or City within thirty (30) days, it shall be deemed rejected. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans. Notwithstanding anything to the contrary set forth herein, approval of the Construction Plans by City shall be deemed approval by Agency.

3.14 Defects in Plans. Neither Agency nor City shall be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with

litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "Claims") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or Developer's deposit with Agency of any of the insurance policies described in this Agreement. The provisions of this Section 3.17 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer's indemnification obligations set forth in this Section shall not apply to Claims arising from the gross negligence or willful misconduct of the Indemnitees.

3.18 Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code, the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

3.19 Liens and Stop Notices. Until the expiration of the term of the Regulatory Agreement and full repayment of the Agency Loan, Developer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting the Project, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge the same; or (b) effect the release thereof by recording and delivering to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to Agency that the claim of lien or stop notice will be paid or discharged.

3.20 Right of Agency to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property pursuant to Section 3.19 above, the Agency shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer. In such event Developer shall be liable for and shall immediately reimburse Agency for such paid lien or stop notice. Alternatively, the Agency may require Developer to immediately deposit with Agency the amount necessary to satisfy such lien or claim pending resolution thereof. The Agency may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of

construction of the Improvements for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property or the Improvements. The Agency may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Agency deems necessary or desirable to protect its interest in the Property and the Improvements.

3.21 Insurance Requirements. Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X.

ARTICLE IV

AGENCY LOAN

4.1 Loan and Note. In order to increase the affordability of the Project, Agency agrees to provide a loan to Developer in the principal amount of Two Million Three Hundred Thousand Dollars (\$2,300,000) (the "Loan") upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by a Secured Promissory Note in the amount of the Loan (the "Note") dated as of the Effective Date and executed by Developer substantially in the form attached hereto as Exhibit E. The Note shall be secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") executed by Developer as Trustor for the benefit of Agency substantially in the form attached hereto as Exhibit F. The Deed of Trust shall be recorded against the Property subordinate only to such liens as Agency shall approve in writing. The outstanding principal balance of the Note will bear interest at five percent (5%) compounded annually commencing upon the date of disbursement of the Loan Proceeds. Agency represents and warrants that the Loan will not be funded in whole or in part directly or indirectly with federal funds.

~~Provided that Developer has complied with all conditions precedent to disbursement of the Loan set forth in Section 4.6, the proceeds of the Loan ("Loan Proceeds") shall be disbursed in accordance with Section 4.4 hereof. Without limiting the generality of the foregoing, subject to Section 4.7, it is expressly understood by the Parties that Agency's obligation to fund the Loan is contingent upon the completion of the Project, the issuance of a final certificate of occupancy for the Project, and the closing of permanent financing for the Project. The Parties agree that Agency shall disburse Loan Proceeds only for the purposes set forth in Section 4.4.~~

Agency shall have the right to terminate this Agreement, and shall have no obligation to fund the Loan if Developer does not concurrently obtain additional funding in an aggregate amount which, together with other sources of financing committed to Developer is sufficient to fully refinance the Project construction loan.

4.2 Payment Dates; Maturity Date. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the Agency Documents shall be payable in full on the thirtieth (30th) anniversary of the Loan origination date.

4.2.1 Annual Payments from Surplus Cash. Commencing on June 1 of the year following issuance of the final certificate of occupancy for the Project and on the first day of each June during the term of the Loan, Developer shall pay to Agency fifty percent (50%) of all Surplus Cash (defined below) generated by the Project during the previous calendar year to

reduce the indebtedness owed under the Note. No later than May 1 of each year during the term of the Loan, beginning on May 1 of the year following issuance of a final certificate of occupancy for the Project, Developer shall provide to Agency Developer's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as Agency may reasonably request, including without limitation, an independent audit prepared for the Project by a certified public accountant. No later than November 1 of each year during the term of the Loan, beginning on November 1 of the year following issuance of the final certificate of occupancy for the Project, Developer shall provide to Agency a projected budget for the following calendar year which shall include an estimate of Surplus Cash. Surplus Cash will be determined on the basis of financial statements prepared by a certified public accountant in accordance with generally accepted accounting principles. Upon request, Developer shall permit Agency to inspect Developer's books and records to ensure compliance with the Agency Documents.

4.2.1.1 "**Surplus Cash**" shall mean for each calendar year during the term of the Loan, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Project. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Project, less fees and closing costs reasonably incurred in connection with such refinancing, repayment of the loan being refinanced, and any Agency-approved uses of the net cash proceeds of the refinancing.

4.2.1.2 "**Gross Revenue**" shall mean for each calendar year during the term of the Loan, all revenue, income, receipts and other consideration actually received by Developer from the operation and leasing of the Project. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance not paid to senior lenders; the proceeds of casualty insurance not used to rebuild the Improvements and not paid to senior lenders; condemnation awards for a taking of part or all of the Property or the Improvements for a temporary period; and the fair market value of any goods or services provided to Developer in consideration for the leasing or other use of any part of the Project. Gross Revenue shall include any release of funds from replacement and other reserve accounts to Developer other than for costs associated with the Project. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances.

4.2.1.3 "**Annual Operating Expenses**" shall mean for each calendar year during term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on loans which have been approved by the Agency and which are secured by deeds of trust senior in priority to the Agency Deed of Trust ("**Approved Senior Loans**") or which Agency has approved pursuant to the approved Financing Plan; property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants;

maintenance and repair costs; fees for licenses and permits required for the operation of the Project; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Developer incurred in the ordinary course of business; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount no more than \$400 per unit per year or such greater amount as may be required by a physical needs assessment prepared by a third-party selected by Agency and prepared at Developer's expense no less frequently than once every five years throughout the term of the Loan; partnership management fees payable to Developer's general partner in the maximum aggregate sum of Fifteen Thousand Dollars (\$15,000) per year, payable only during the first 15 years following issuance of a certificate of occupancy for the Project; an asset management fee equal to Five Thousand Dollars (\$5,000) per year, increasing at a rate of 3% per year and payable to the limited partner only during the first 15 years following issuance of a certificate of occupancy for the Project; and other ordinary and reasonable operating expenses. Payments to Developer, its partners or affiliates in excess of the limitations set forth in this Section shall not be counted toward operating expenses for the purpose of calculating Surplus Cash.

4.2.2 Exclusions from Annual Operating Expenses. Annual Operating Expenses shall exclude the following: developer fees and interest on any deferred developer fees; contributions to Project operating reserves; subject to Section 4.2.3, debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Agency Deed of Trust; depreciation, amortization, depletion or other non-cash expenses; capital expenditures; expenses paid for with disbursements from any reserve account; distributions to partners; any amount paid to Developer, any general partner of Developer, or any entity controlled by the persons or entities in control of Developer or any general partner of Developer. Notwithstanding the foregoing limitation regarding payments to Developer and related parties, the following fees shall be included in Annual Operating Expenses in accordance with the limitations set forth in Section 4.2.1.3 even if paid to an affiliate of Developer or a partner of Developer: fees paid to a property management agent or resident services agent, partnership management fees and asset management fees.

4.2.3 Adjustment to Operating Expenses. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include: (a) the repayment of operating deficit loans provided by Developer's limited partner(s) provided such loans bear interest at no more than three percent (3%) in excess of the rate of interest most recently announced by Bank of America, NT & SA (or its successor bank) at its San Francisco office as its "prime rate" (hereafter, the "**Interest Rate**"), and (b) the amount of any tax credit adjustor that is required to be paid from Project cash flow.

4.3 Security. As security for repayment of the Note, Developer shall execute the Deed of Trust in favor of Agency as beneficiary pursuant to which Agency shall be provided a lien against Developer's interest in the Property and the Improvements. The Deed of Trust shall be dated as of the Effective Date, shall be substantially in the form attached hereto as Exhibit F, and shall be recorded in the Official Records on the date that Developer acquires the Property. The Deed of Trust shall be a lien on the Property, and may be subordinated only to the Permitted

Exceptions and such liens and encumbrances as Agency shall approve in writing. Developer acknowledges that the Deed of Trust secures Developer's performance of Developer's obligations pursuant to this Agreement and the Regulatory Agreement which may survive repayment of the Note, and that the Deed of Trust shall not be reconveyed prior to Developer's satisfaction of such obligations.

4.4 Use and Disbursement of Proceeds. The Loan Proceeds shall be used solely to pay the City's impact fees assessed for the Project. ~~Upon satisfaction of the conditions set forth in Section 4.6, at close of escrow for the Loan, the Loan Proceeds shall be disbursed for distribution to City.~~

4.5 Intentionally omitted.

4.6 Conditions to Disbursement of Loan Proceeds. Agency's obligation to fund the Loan and disburse the proceeds thereof is conditioned upon the satisfaction of all of the following conditions:

- (a) Developer's execution and delivery to Agency of this Agreement, the Note, the Deed of Trust, the Memorandum, the Regulatory Agreement, the Option Agreement and a Memorandum of the Option Agreement;
- (b) Recordation of the Memorandum, the Deed of Trust, the Regulatory Agreement and the Memorandum of the Option Agreement in the Official Records;
- (c) The issuance by the City of a final certificate of occupancy for the Project;
- (d) The closing and funding of permanent financing in an amount which, together with all other sources of financing identified in the Financing Plan and for which Developer has received binding commitments, is sufficient to fully refinance Developer's construction loan for the Project;
- (e) The issuance by an insurer satisfactory to Agency of an A.L.T.A. lender's policy of title insurance ("**Title Policy**") for the benefit of Agency in the amount of the Loan, insuring that the lien of the Deed of Trust is subject only to exceptions numbers 4, 5, and 6 identified in that certain Preliminary Report issued by First American Title Company dated March 28, 2007, and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as Agency may approve in writing (collectively, the "**Permitted Exceptions**") and containing such endorsements as Agency may reasonably require, with the cost of such Title Policy to be paid by Developer;
- (f) Developer's delivery to the Agency of evidence of property and liability insurance coverage in accordance with the requirements set forth herein;
- (g) Developer's delivery to Agency of evidence reasonable satisfactory to Agency that there are no mechanics' liens or stop notices related to the Property or the Project, and Developer's provision to Agency of full waivers or releases of lien claims if required by Agency; and

(h) Developer's delivery to Agency of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Developer is properly organized and authorized to do business in the State of California, (ii) a certified resolution indicating that Developer has authorized this transaction and that the persons executing the Agency Documents on behalf of Developer have been duly authorized to do so, (iii) certified copy of Developer's partnership agreement, and (iv) certificate of good standing and organizational documents for each of Developer's general partners.

4.7 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the Agency shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

- (i) the failure of any of Developer's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the conditions to disbursement of the Loan set forth in Section 4.6 have not been satisfied within twenty-four (24) months following the issuance of a final certificate of occupancy for the Project; or
- (iv) the occurrence of an Event of Default under any of the Agency Documents which remains uncured beyond any applicable cure period.

4.8 Prepayment; Acceleration.

(a) Prepayment. Developer shall have the right to prepay the Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Developer's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

(b) Due On Sale or Encumbrance. Unless Agency agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer (as defined in Section 6.2) absent the prior written consent of Agency of all or any part of or interest in the Property except as otherwise permitted pursuant to this Agreement.

4.9 Nonrecourse. Except as expressly provided in this Section 4.9, neither Developer nor its partners shall have personal liability for payment of the principal of, or interest on the Note, and the sole recourse of Agency with respect to the payment of the principal of, and interest on the Note shall be to the Property and the Improvements and any other collateral held by Agency as security for the Note; provided however, nothing contained in the foregoing limitation of liability shall:

(A) impair the enforcement against all such security for the Loan of all the rights and remedies of the Agency under the Deed of Trust and any financing statements Agency files in connection with the Loan, as each of the foregoing may be amended, modified, or restated from time to time;

(B) impair the right of Agency to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Agency to enforce and realize upon the Deed of Trust, the interest in the Property and the Improvements created thereby and any other collateral given to Agency in connection with the indebtedness evidenced by the Note, and to name the Developer as party defendant in any such action;

(C) be deemed in any way to impair the right of the Agency to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto;

(D) constitute a waiver of any right which Agency may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to Agency under the Note or to require that the Property and the Improvements shall continue to secure all of the indebtedness owed to Agency in accordance with the Note and the Deed of Trust; or

(E) limit or restrict the ability of Agency to seek or obtain a judgment against Developer to enforce against Developer to:

(a) recover under Sections 3.14, 3.17, 8.2, 10.1, 11.1, and 11.19 hereof (pertaining to Developer's indemnification obligations), or

(b) recover from Developer and its general partners compensatory damages as well as other costs and expenses incurred by Agency (including without limitation attorney's fees and expenses) arising as a result of the occurrence of any of the following:

(i) any fraud or material misrepresentation on the part of the Developer, any general partner thereof, or any officer, director or authorized representative of the Developer or of any general partner thereof in connection with the request for or creation of the Loan, or in any Agency Document, or in connection with any request for any action or consent by Agency in connection with the Loan;

(ii) any failure to maintain insurance on the Property and Improvements as required pursuant to the Agency Documents;

(iii) failure to pay taxes, assessments or other charges which may become liens on the Property or Improvements;

(iv) the presence of hazardous or toxic material or waste on the Property or other violation of the Developer's obligations under Section 8.1 hereof or those sections of the Deed of Trust pertaining to environmental matters;

(v) the occurrence of any act or omission of Developer that results in waste to or of the Property or the Improvements and which has a material adverse effect on the value of the Property or the Improvements;

(vi) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust;

(vii) the material misapplication of Loan Proceeds;

(viii) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property or the Improvements; and

(ix) the failure of Developer to pay all amounts payable under the Note in full if Developer Transfers the Property in contravention of the Agency Documents.

Notwithstanding any provision to the contrary set forth herein, neither Developer's investor limited partner, Developer's special limited partner (nor their respective limited partners), when acting in such capacities, shall incur liability for any of the foregoing.

ARTICLE V

USE OF THE PROPERTY

5.1 Use; Affordable Housing. Developer covenants and agrees for itself and its successors and assigns that the Property shall be used for the development and operation of a multi-family residential project in accordance with the terms and conditions of this Agreement and the Regulatory Agreement.

5.2 Maintenance. Developer shall at its own expense, maintain the Property, the Improvements and related landscaping and common areas in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Developer agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking garage and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Developer shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Developer shall provide adequate security services for occupants of the Project.

5.3 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property and payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

5.4 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, nor shall Developer or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall run with the land, be binding upon any subcontracting parties, successors, assigns and other transferees under this Agreement and shall remain in effect in perpetuity.

All deeds, leases or contracts for the sale, lease, sublease, or other transfer of the Property, or any portion thereof made or entered into by Developer, its successors or assigns, shall contain therein the following language:

(a) In Deeds:

"The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenants shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this lease is made and accepted upon

and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts:

"The contractor herein covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this contract is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall be binding upon any subcontracting Parties, successors, assigns and other transferees under the contract."

ARTICLE VI

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER; AGENCY OPTION AND RIGHT OF FIRST REFUSAL

6.1 Change Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its principals are of particular concern to the Agency. It is because of these qualifications, experience, financial capacity and expertise that the Agency has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

6.2 Prohibition on Transfer. Prior to the expiration of the term of the Regulatory Agreement, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "Transfer") of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of Agency. Any such attempt to assign this Agreement without the Agency's consent

shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of Agency. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner or special limited partner, nor the transfer of the interests of the investor limited partner and/or special limited partner shall be restricted by this provision.

6.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual residents to tenants for occupancy as their principal residence in accordance with the Regulatory Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property in accordance with the approved Financing Plan and subject to the requirements of Article VII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) any transfer of limited partnership interests in Developer in accordance with the Developer's agreement of limited partnership, as it may be amended from time to time (the "Agreement"), provided that the Partnership Agreement and/or the instrument of Transfer provides for development and operation of the Property and Project in a manner consistent with this Agreement; (vi) the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, provided the replacement general partner is reasonably satisfactory to Agency; (vii) the transfer of the Managing General Partner's interest to another nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, provided such replacement general partner is reasonably satisfactory to Agency; or (viii) the transfer of the Administrative General Partner's interest to an affiliate of the Investor Limited Partner.

6.4 Requirements for Proposed Transfers. The Agency may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 6.4 shall not apply to Transfers described in clauses (i) through (iv) of Section 6.3):

(i) The proposed transferee demonstrates to the Agency's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Agency to competently complete construction of the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for Agency review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such

documentation of the proposed transferee's qualifications and development capacity as the Agency may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement and the Agency Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement and the Regulatory Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Agency in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency's governing board. If a proposed Transfer has not been approved by Agency in writing within thirty (30) days following Agency's receipt of written request by Developer, it shall be deemed rejected.

6.5 Effect of Transfer without Agency Consent.

6.5.1 In the absence of specific written agreement by the Agency, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement or the Regulatory Agreement.

6.5.2 Without limiting any other remedy Agency may have under this Agreement, or under law or equity, this Agreement may be terminated by Agency if without the prior written approval of the Agency, Developer assigns or Transfers this Agreement or the Property prior to the Agency's issuance of a Certificate of Completion. This Section 6.5.2 shall not apply to Transfers described in clauses (i) through (vi) of Section 6.3.

6.6 Recovery of Agency Costs. Developer shall reimburse Agency for all Agency costs, including but not limited to attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten days following Agency's delivery to Developer of an invoice detailing such costs.

6.7 Agency Option and Right of First Refusal. Developer hereby grants to the Agency an option (the "**Option**") to purchase the Property, Project, and Project reserves (collectively, the "**Option Property**") and an right of first refusal ("**Refusal Right**") to purchase all right, title and interest Developer has in the Property and the Project pursuant to the terms and conditions set forth in this Section. The Parties shall execute the Option Agreement substantially in the form attached hereto as Exhibit H and shall record a Memorandum thereof substantially in the form attached hereto as Exhibit I in the Official Records concurrently with Developer's acquisition of the Property and the recordation of the other Agency Documents. The Option and

Refusal Right shall be senior to any similar option or right of first refusal provided to any other individual or entity.

The Option Agreement shall conform to the following terms and conditions:

A. Subject to clause G of this Section 6.7, the Option shall be exercisable during a twelve (12) month period commencing twelve (12) months following the expiration of the fifteenth (15th) full year of the compliance period for the low-income housing tax credits (the "Compliance Period") as determined under Section 42(i)(1) of the Internal Revenue Code of 1986 as amended or any successor provision.

B. The Option price shall be equal to the greater of the following amounts:

(a) Debt and Taxes. An amount sufficient to (i) to pay all debts secured by mortgages or deeds of trust on the Project and Property, (ii) distribute to the limited partners cash proceeds equal to the taxes projected to be imposed on the limited partners (or the partners thereof) as a result of the sale pursuant to the Option; (iii) repay the limited partners the amount of any additional equity contributions and the outstanding balance of any unsecured loans provided by the limited partners to fund Project operating deficits or to cure a default under, or reduce the outstanding principal balance of, conventional permanent loans secured by the Property (together with interested accrued on such sums at the rate specified in Section 4.2.3); and (iv) to pay to the limited partners the remaining balance payable under any tax credit adjustor that has been imposed due to Project noncompliance, but only when all of the following conditions are satisfied: (a) the tax credit adjuster was required to be paid from Project cash flow, (b) the tax credit adjuster was required to be paid by a guarantor under a guaranty agreement for the benefit of the limited partner, (c) the limited partner has used commercially reasonable efforts but has been unable to collect on the guaranty, and (d) the guaranty agreement and the rights of the limited partners thereunder are assigned to the Agency; or

(b) Fair Market Value. (i) The fair market value of the Option Property appraised as low-income housing to the extent continuation of such use is pursuant to the Regulatory Agreement or other governmental agency regulatory agreements, with any such appraisal to be made by a licensed appraiser, selected as set forth in clause (ii) below, who is a member of the Master Appraisal Institute ("MAI") and who has experience in the geographic area in which the Project is located, as reduced by customary costs of a sale, including customary sales commissions (anticipated to be approximately six percent (6%)); provided, however, that if prior to exercise of the Option the Internal Revenue Service has issued a revenue ruling or provided a private letter ruling to Developer, Agency or City providing that property of the nature and use of the Project may be sold under the circumstances similar to those pertaining to the Option at a lesser price, then the Option price shall be such lesser price, but in no event less than the price determined pursuant to the preceding paragraph (a).

(ii) The fair market value of the Option Property shall be determined as follows: Developer and Agency shall select a mutually acceptable appraiser who shall determine the fair market value of the Option Property. In the event the parties are unable to agree upon an appraiser, Developer and Agency shall each select an appraiser. If the difference between the two appraisals is less than or equal to ten percent (10%) of the lower of the two

appraisals, then fair market value shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two appraisers shall jointly select a third appraiser. The appraisals shall take into account the requirement that the Project remain dedicated for use as affordable housing pursuant to any restrictions under all loan agreements, regulatory agreements, or other instruments applicable to the Property, and shall assume that the buyer is required to pay property taxes and is not exempt under California Revenue and Taxation Code Section 214(g). If the third appraisal is less than either of the first two, then fair market value shall be the average of the two lowest appraisals. If the third appraisal is greater than the first two, then fair market value shall be the average of the two highest appraisals. If the third appraisal falls between the previous two appraisals, the fair market value shall be the value established by the third appraisal. Developer and Agency shall each pay the costs of any appraiser they individually select, shall share the cost equally of any appraiser jointly selected, and shall share the cost equally of any third appraiser selected pursuant to this paragraph. Any appraiser selected pursuant to this Section shall be an MAI appraiser with at least five years of experience and shall have had substantial experience appraising low-income housing tax credit projects.

C. Refusal Right. Subject to clause G of this Section 6.7 Agency shall have a right of first refusal to purchase the Property and the Project for a period of twelve (12) months commencing upon the date which is twelve (12) months following the end of the Compliance Period. This right shall be exercisable in accordance with the requirements of Internal Revenue Code Section 42(i)(7)(A) and any successor provision, together with any regulations promulgated pursuant thereto.

D. Purchase Price Under Refusal Right. The purchase price for the Property and the Project pursuant to the Refusal Right shall be equal to the sum of (a) an amount sufficient to pay all debts secured by mortgages or deeds of trust secured by the Project or the Property; (b) an amount sufficient to distribute to the limited partners cash proceeds equal to the taxes projected to be imposed on the limited partners (or the partners thereof) as a result of the sale pursuant to the Refusal Right; (c) an amount sufficient to repay to the limited partners the amount of any additional equity contributions and the outstanding balance of any unsecured loans provided by the limited partners to fund Project operating deficits or to cure a default under, or reduce the outstanding principal balance of, conventional permanent loans secured by the Property (together with interest accrued on such sums at the rate specified in Section 4.2.3); and (d) an amount sufficient to pay to the limited partners the remaining balance payable under any tax credit adjuster that has been imposed due to Project noncompliance, but only when all of the following conditions are satisfied: (i) the tax credit adjuster was required to be paid from Project cash flow, (ii) the tax credit adjuster was required to be paid by a guarantor under a guaranty agreement for the benefit of the limited partner, (iii) the limited partner has used commercially reasonable efforts but has been unable to collect on the guaranty, and (iv) the guaranty agreement and the rights of the limited partners thereunder are assigned to the Agency. If the Agency desires to have existing reserves transferred to the Agency in connection with the transfer of the Project, the purchase price under the Refusal Right shall increase by the fair market value of such reserves as determined by the appraiser(s) who determine the fair market value of the Project. Fair market value shall be calculated considering the nature of the reserves and any existing restrictions on the use or availability of such reserves.

E. Assignment. Agency shall have the right to assign the Option and the Refusal Right to the City, any other governmental entity, or a qualified nonprofit corporation. If the Agency ceases to exist, the City shall automatically succeed to the rights of Agency.

F. Inspection Rights: Rights to Direct Use of Reserves. In connection with the rights afforded to Agency pursuant to this Section 6.7, Agency shall have the right to review Developer's financial statements, partnership tax returns, and Developer's partnership agreement and all amendments thereto, including without limitation, any pro formas prepared to project anticipated tax liabilities upon sale of the Project. During the period commencing upon Agency's exercise of the Option or Refusal Right, Agency shall have the right to require Project replacement reserves to be expended for improvements to the Project, as directed by Agency in its reasonable discretion. Developer agrees that it shall take reasonable steps to avoid the accrual of tax obligations on the part of the investor limited partner(s) upon sale of the Project to Agency pursuant to this Section 6.7.

G. Termination of Option and Right of First Refusal. Provided that no Developer default has arisen and remains uncured beyond any applicable cure period under this Agreement, or any other Agency Document, if Developer or any approved successor pays the entire principal balance of the Loan, together with all accrued interest and all other sums payable to Agency pursuant to the Agency Documents prior to the date which is twelve (12) months following the end of the Compliance Period, then the Option and Refusal Right shall terminate effective as of the date of such payment.

ARTICLE VII

SECURITY FINANCING AND RIGHTS OF MORTGAGEES

7.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property only for the purpose of securing loans approved pursuant to the approved Financing Plan for the purpose of financing the acquisition of the Property, the design and construction of the Improvements, and other expenditures reasonably necessary for development of the Property pursuant to this Agreement. Developer shall not enter into any conveyance for such financing without the prior written approval of Agency's Executive Director or his or her designee. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

7.1.1 Memorandum and Regulatory Agreement to be Senior to Mortgages. Developer covenants and agrees that unless otherwise agreed upon by Agency pursuant to a written instrument conforming to the requirements of California Health and Safety Code Section 33334.14 (a) (4) and including without limitation, the provisions set forth in Section 7.5 below, the Memorandum of this Agreement, the Regulatory Agreement and the Memorandum of the Option shall be senior in priority to any mortgage, deed of trust, or other security instrument recorded against the Property, and that if any such instrument has been recorded against the Property prior to recordation of such instruments, Developer shall promptly secure execution of

such subordination agreements as may be necessary to ensure that Agency's interests shall not be defeated as a result of foreclosure of any such instrument.

7.2 Holder Not Obligated to Construct. The holder of any mortgage, deed of trust authorized by this Agreement shall not be obligated to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

7.3 Notice of Default and Right to Cure. Whenever Agency delivers any notice of default hereunder, Agency shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property provided that Agency has been provided with the address for delivery of such notice. Agency shall have no liability to any such holder for any failure by the Agency to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy any such default or breach. In the event that possession of the Property (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Property within sixty (60) days after receipt of the Agency's notice, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify Agency of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer's obligations to Agency under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to Agency that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such holder properly completing the Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement and shall be entitled to a Certificate of Completion upon compliance with the requirements of this Agreement.

7.4 Failure of Holder to Complete Improvements. In any case where, six (6) months after default by Developer in completion of construction of the Improvements, the holder of record of any mortgage or deed of trust has not exercised its option to construct the Improvements, or having first exercised its option to construct, has not proceeded diligently with construction, Agency shall be afforded those rights against such holder that it would otherwise have against Developer under this Agreement.

7.5 Agency Right to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by the Property, Agency may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Developer. In such event, Developer shall be liable for, and Agency shall be entitled to

reimbursement from Developer for all costs and expenses incurred by Agency associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the Agency Deed of Trust.

7.6 Holder to be Notified. Developer, for itself, its successors and assigns hereby warrants and agrees that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged by the holder prior to its creating any security right or interest in the Property.

7.7 Modifications to Agreement. Agency shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter Agency's substantive rights and obligations under this Agreement.

7.8 Estoppel Certificates. Either Party shall, at any time, and from time to time, within thirty (30) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE VIII

ENVIRONMENTAL MATTERS

8.1 No Agency Liability; Developer's Covenants. Neither Agency nor City shall be responsible for the cost of any soil, groundwater or other environmental remediation or other response activities for any Hazardous Materials existing or occurring on the Property or any portion thereof, and Developer shall be solely responsible for all actions and costs associated with any such activities required for the development of the Project, the Property, or any portion thereof. Upon receipt of any notice regarding the presence, release or discharge of Hazardous Materials in, on or under the Property, or any portion thereof, Developer (as long as Developer owns the property which is the subject of such notice) agrees to timely initiate and diligently pursue and complete all appropriate response, remediation and removal actions for the presence, release or discharge of such Hazardous Materials within such deadlines as specified by applicable Environmental Laws. Developer hereby covenants and agrees that:

(1) Developer shall not knowingly permit the Project or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Project or the Property with the exception of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential property and used, stored and disposed of in compliance with Hazardous Materials Laws, and

(2) Developer shall keep and maintain the Project and the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Hazardous Materials Laws.

8.2 Environmental Indemnification. Developer shall indemnify, defend (with counsel approved by Agency) and hold the Indemnitees harmless from and against any and all Claims including without limitation any expenses associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials and administrative, enforcement or judicial proceedings resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal or the alleged presence, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws or the covenants set forth in Section 8.1. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this Section 8.2 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement.

8.2.1 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 8.2 above, are in no way limited or otherwise affected by any information the Agency or the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the Agency or the City obtained such information from the Developer or from its own investigations. It is further agreed that Agency and City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Developer, of any of the insurance policies described in this Agreement.

8.3 Hazardous Materials. As used herein, the term "**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251],

the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

8.4 Environmental Laws. As used herein, the term "**Environmental Laws**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as each of the foregoing now exist or are hereafter amended, together with any regulations promulgated thereunder.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer ("**Event of Developer Default**"):

(a) Developer fails to commence or complete construction of the Project within the times set forth in Section 3.6, or subject to force majeure abandons or suspends construction of the Project prior to completion for a period of sixty (60) days or more;

(b) Developer fails to pay when due the principal and interest (if any) payable under the Note and such failure continues for ten (10) days after Agency notifies Developer thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VI;

(d) Developer fails to maintain insurance on the Property and the Project as required pursuant to this Agreement, and Developer fails to cure such default within ten (10) days;

(e) Subject to Developer's right to contest the following charges pursuant to Section 5.3, if Developer fails to pay prior to delinquency taxes or assessments due on the Property or the Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Developer fails to cure such default within 30 days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(f) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Agency or the City in connection with this Agreement or Developer's request for the Loan proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Agency or the City;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Developer or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer

under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;

(j) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(l) An event of default arises under any Agency Document and remains uncured beyond any applicable cure period; or

(m) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Agency shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within 30 days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than sixty (60) days after receipt of notice of the default.

9.2 Agency Default. An event of default on the part of Agency ("**Event of Agency Default**") shall arise hereunder if Agency fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Developer to Agency, or in the case of a default which cannot with due diligence be cured within thirty (30) days, Agency fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

9.3 Agency's Right to Terminate Agreement. If an Event of Developer Default shall occur and be continuing beyond any applicable cure period, then Agency shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If Agency makes such election, Agency shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

9.4 Agency's Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Default and the expiration of any applicable cure period, Agency shall have all remedies available to it under law or equity, including, but not limited to the following, and Agency may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to the Agency Documents, exercise one or more of the following remedies:

- (a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- (b) Seek specific performance to enforce the terms of the Agency Documents;
- (c) Foreclose on the Property pursuant to the Deed of Trust;
- (d) Pursue any and all other remedies available under law to enforce the terms of the Agency Documents and Agency's rights thereunder.

9.5 Developer's Remedies Upon an Event of Agency Default. Upon the occurrence of an Agency Event of Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Developer may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement.

9.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything to the contrary set forth herein, a party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

9.7 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

9.8 Rights of Limited Partners. Whenever Agency delivers any notice of default hereunder, Agency shall concurrently deliver a copy of such notice to the Investor Limited Partner and the Special Limited Partner in accordance with Section 11.3. The Special Limited Partner and the Investor Limited Partner and their respective partners shall each have the same right as Developer to cure or remedy any default hereunder.

ARTICLE X

INDEMNITY AND INSURANCE.

10.1 Indemnity. Developer shall indemnify, defend (with counsel approved by Agency) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Developer's or Developer's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or otherwise arising out of or in connection with Developer's performance under this Agreement. Developer's indemnification obligations under this Section 10.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that Agency and City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Developer, of any of the insurance policies described in this Agreement.

10.2 Liability and Workers Compensation Insurance.

(a) Prior to initiating work on the Project and continuing through the issuance of the Certificate of Completion, Developer and all contractors working on behalf of Developer on the Project shall maintain a commercial general liability policy in the amount of One Million Dollars (\$1,000,000) combined single limit, Two Million Dollars (\$2,000,000) annual aggregate, together with Five Million Dollars (\$5,000,000) umbrella liability coverage, or such other policy limits as Agency may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Until issuance of the Certificate of Completion, Developer and all contractors working on behalf of Developer shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to Agency evidence satisfactory to Agency that Developer and any contractor with whom Developer has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Upon commencement of construction and continuing until issuance of a Certificate of Completion, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming Agency as loss payee.

(d) Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with

deductible, if any, in an amount acceptable to Agency, naming Agency as loss payee.

(e) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name Agency and City as loss payees as their interests may appear.

(f) Prior to commencement of construction, Developer shall furnish Agency with certificates of insurance in form acceptable to Agency evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City and Agency of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(g) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Agency and City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Agency or City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse Agency or City for such expense upon receipt of billing from Agency or City.

(h) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency or City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City and Agency. Developer shall furnish the required certificates and endorsements to Agency prior to the commencement of construction of the Project, and shall provide Agency with certified copies of the required insurance policies upon request of Agency.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due

to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Agency which shall not excuse performance by Agency), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and Agency (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Agency). Agency and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency: Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attn: Executive Director

Developer: MIL Aspen Associates, A California Limited Partnership
151 Kalmus, Suite J-5
Costa Mesa, CA 92626
Attn: Graham Espley-Jones

Limited Partner: Hudson Aspen LLC
c/o Hudson Housing Capital, LLC
630 Fifth Avenue, 23rd floor
New York, NY 10111
Attn: Joseph A. Macari
Fax: (212) 218-4467

With a copy to: Hudson Aspen, LLC
c/o AEGON USA Realty Advisor, Inc.
Mail Stop 5553
4333 Edgewood Road, N.E.
Cedar Rapids, IA 52499-5553
Attn: LIHTC Reporting
Facsimile: (319) 355-2188

Special Limited Partner: Hudson SLP LLC
630 Fifth Avenue, 23rd floor
New York, NY 10111
Attn: Joseph A. Macari
Fax: (212) 218-4467

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time

for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VI, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named party shall be deemed to apply to any permitted successor and assign of such party who has acquired an interest in compliance with this Agreement or under law.

11.7 Survival. All representations made by Developer hereunder and Developer's obligations pursuant to Sections 3.14, 3.17, 8.2, 10.1, 11.1, and 11.19 shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion.

11.8 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

11.9 Action or Approval. Whenever action and/or approval by Agency is required under this Agreement, Agency's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Executive Director determines in his or her discretion that such action or approval requires referral to Agency's Board for consideration.

11.10 Entire Agreement. This Agreement, including Exhibits A through I attached hereto and incorporated herein by this reference, together with the other Agency Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof. In the event of any inconsistency between this Agreement and the Memorandum of Understanding dated as of April 3, 2007 and executed by and among Developer, Agency and City, this Agreement shall prevail.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Amendment may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.13 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.15 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of Agency or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

11.16 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

11.17 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California.

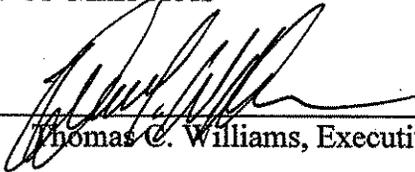
11.19 General Indemnification. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless Indemnitees from all Claims (including without limitation, attorneys' fees) arising in connection with any claim, action or proceeding to attack, set aside, void, or annul any approval by the City or the Agency or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Project or this Agreement. The Agency will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. The Agency and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if the Agency or City chooses to do so, Developer shall reimburse Agency and City for reasonable attorneys' fees and expenses incurred.

SIGNATURES ON FOLLOWING PAGE.

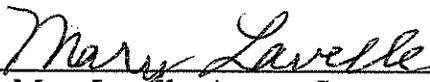
IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

AGENCY

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

By: 
Thomas C. Williams, Executive Director

ATTEST:

By: 
Mary Layelle, Agency Secretary

APPROVED AS TO FORM:

By: 
Steven T. Mattas, Agency Counsel

DEVELOPER

MIL ASPEN ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP

By: MIL Aspen Family Housing, LLC, a California limited liability company
Its: Administrative General Partner

By: Global Premier Development, Inc., a California corporation
Its: Sole Member

By: _____
Andrew Hanna
Its: President

By: Western Community Housing, Inc., a California nonprofit public benefit corporation
Its: Managing General Partner

By: _____
Graham Espley-Jones
Its: President

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

AGENCY

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

By: _____
Thomas C. Williams, Executive Director

ATTEST:

By: _____
Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

By: _____
Steven T. Mattas, Agency Counsel

DEVELOPER

MIL ASPEN ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP

By: MIL Aspen Family Housing, LLC, a California limited liability company
Its: Administrative General Partner

By: Global Premier Development, Inc., a California corporation
Its: Sole Member

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Andrew Hanna
Its: President

By: Western Community Housing, Inc., a California nonprofit public benefit corporation
Its: Managing General Partner

By: _____
Graham Espley-Jones
Its: President

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

AGENCY

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

By: _____
Thomas C. Williams, Executive Director

ATTEST:

By: _____
Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

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Steven T. Mattas, Agency Counsel

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Its: Sole Member

By: _____
Andrew Hanna
Its: President

By: Western Community Housing, Inc., a California nonprofit public benefit corporation
Its: Managing General Partner

By: _____
Graham Espley-Jones
Its: President

Exhibit A

LEGAL DESCRIPTION OF PROPERTY
(Attach legal description.)

Exhibit B

FORM OF MEMORANDUM OF OWNER PARTICIPATION AGREEMENT
(Attach form of Memorandum.)

Exhibit C

FORM OF CERTIFICATE OF COMPLETION
(Attach form of Certificate.)

Exhibit D

FORM OF REGULATORY AGREEMENT
(Attach form of Regulatory Agreement.)

Exhibit E

FORM OF PROMISSORY NOTE
(Attach form of Promissory Note.)

Exhibit F

FORM OF DEED OF TRUST
(Attach form of Deed of Trust.)

Exhibit G

FINANCING PLAN
(Attach Financing Plan.)

Exhibit H

FORM OF OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT
(Attach Form of Option and Right of First Refusal Agreement)

Exhibit I

FORM OF MEMORANDUM OF OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT

LEGAL DESCRIPTION

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

PARCEL ONE:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD (STATE HIGHWAY) AT THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM OTTO K. HUELFFENHAUS, ET UX, TO LLOYD-JANIC, ET AL, DATED NOVEMBER 23, 1945, RECORDED DECEMBER 11, 1945 IN BOOK 1307 OF OFFICIAL RECORDS, PAGE 443, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING SOUTH 0° 32' EAST ALONG THE SAID EASTERLY LINE OF THE SAN JOSE-MILPITAS ROAD 135.25 FEET; THENCE SOUTH 84° 28' EAST AND PARALLEL WITH THE NORTHERLY LINE OF SAID LAND SO DESCRIBED IN THE DEED TO SAID JANIC, ET AL, 210.00 FEET; THENCE AT RIGHT ANGLES NORTH 5° 32' EAST 135 FEET, MORE OR LESS, TO A POINT ON THE SAID NORTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID JANIC, ET AL;; THENCE NORTH 84° 28' WEST ALONG SAID LAST NAMED LINE, 223 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, AND BEING A PORTION OF THAT CERTAIN 240 ACRE TRACT OF LAND IN THE MILPITAS RANCHO DEEDED BY MARY J. TRIMBLE, ET AL, TO TRIMBLE ORCHARD COMPANY, DATED OCTOBER 31, 1891, RECORDED JUNE 28, 1892 IN BOOK 147 OF DEEDS, PAGE 524.

PARCEL TWO:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM OTTO K. HUELFFENHAUS, ET UX, TO LLOYD JANIC, ET AL, DATED NOVEMBER 23, 1945, RECORDED DECEMBER 11, 1945 IN BOOK 1307 OF OFFICIAL RECORDS, PAGE 443, SANTA CLARA COUNTY RECORDS, AT THE EASTERNMOST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM JACK E. MENARY, ET UX, TO CAL-PEN LAND DEVELOPMENT CO., A CALIFORNIA CORPORATION, DATED FEBRUARY 10, 1956, RECORDED FEBRUARY 10, 1956 IN BOOK 3412 OF OFFICIAL RECORDS, PAGE 252, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, SOUTH 84° 28' EAST ALONG SAID NORTHEASTERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID JANIC, 109 FEET, MORE OR LESS, TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED AS PARCEL ONE IN THE DEED FROM FLORENCE MAY AUSTIN, AN UNMARRIED WOMAN, TO JACK E. MENARY ENTERPRISES, A CALIFORNIA CORPORATION, DATED APRIL 23, 1955, RECORDED MAY 10, 1955 IN BOOK 3165 OF OFFICIAL RECORDS, PAGE 321, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 5° 32' WEST AND PARALLEL WITH THE SOUTHEASTERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID CAL-PEN LAND DEVELOPMENT CO., 135 FEET, MORE OR LESS, TO A POINT ON THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LAND OF SAID CAL-PEN LAND DEVELOPMENT CO.; THENCE NORTH 84° 28' WEST ALONG SAID NAMED PROLONGATION 109 FEET; MORE OR LESS, TO THE SOUTHERN MOST CORNER OF SAID LAND OF CAL-PEN LAND DEVELOPMENT CO.; THENCE 5° 32' EAST ALONG SAID SOUTHEASTERLY LINE OF LAND OF SAID CAL-PEN LAND DEVELOPMENT CO., 135 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, AND BEING A PORTION OF THAT CERTAIN 240.00 ACRE TRACT OF LAND IN THE MILPITAS RANCHO, DEEDED BY MARY J. TRIMBLE, ET AL, TO TRIMBLE ORCHARD COMPANY, DATED OCTOBER 31, 1891, RECORDED JUNE 28, 1892 IN BOOK 147 OF DEEDS, PAGE 524, SANTA CLARA COUNTY RECORDS.

PARCEL THREE:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM LLOYD JANIC, ET AL, TO LESLIE W. AUSTIN, ET UX, DATED JULY 1, 1946, RECORDED DECEMBER 12, 1946 IN BOOK 1387 OF OFFICIAL RECORDS, PAGE 576, SANTA CLARA COUNTY RECORDS, AT THE NORTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM JACK E. MENARY ENTERPRISES, A CALIFORNIA CORPORATION, TO CAL-PEN LAND DEVELOPMENT CO., A CALIFORNIA CORPORATION, DATED SEPTEMBER 19, 1956, RECORDED SEPTEMBER 25, 1956 IN BOOK 3614 OF OFFICIAL RECORDS, PAGE 97, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, SOUTH 5 DEGREES 32' WEST ALONG THE EASTERLY LINE OF LAND SO DESCRIBED IN THE DEED OF SAID CAL-PEN LAND DEVELOPMENT CO., 135 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER THEREOF; THENCE SOUTH 84° 28' EAST ALONG THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID CAL-PEN LAND DEVELOPMENT CO., 241 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID AUSTIN ABOVE REFERRED TO; THENCE NORTH 3° 20' WEST ALONG SAID LAST NAMED LINE, 136 FEET, MORE OR LESS, TO THE NORTHEASTERLY CORNER THEREOF; THENCE NORTH 84° 28' EAST ALONG THE NORTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID AUSTIN 219.76 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

AN EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF UTILITIES BOTH PUBLIC AND PRIVATE, OVER A STRIP OF LAND 20.00 FEET IN WIDTH, ALONG THE NORTHERLY LINE OF THE PROPERTY DESCRIBED IN THE DEED FROM JACK E. MENARY ENTERPRISES, A CALIFORNIA CORPORATION TO CAL-PEN LAND DEVELOPMENT CO., INC., DATED JUNE 10, 1957 AND RECORDED JUNE 11, 1957 IN BOOK 3818 OF OFFICIAL RECORDS, PAGE 249, AS RESERVED IN SAID DEED RECORDED IN BOOK 3818 OF OFFICIAL RECORDS, PAGE 249.

PARCEL FIVE:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF THAT CERTAIN 2.22 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FLORENCE M. AUSTIN TO KAISER ALUMINUM AND CHEMICAL CORPORATION, A CORPORATION, DATED APRIL 14, 1954, RECORDED MAY 19, 1954 IN BOOK 2876 OF OFFICIAL RECORDS, PAGE 531, SANTA CLARA COUNTY RECORDS; DISTANT THEREON NORTH 84° 28' WEST 219.43 FEET FROM THE SOUTHEASTERLY CORNER THEREOF; RUNNING THENCE FROM SAID POINT OF BEGINNING, SOUTH 84° 28' EAST ALONG THE SAID SOUTHERLY LINE OF THE 2.22 ACRE TRACT, FOR A DISTANCE OF 219.43 FEET TO THE SOUTHEASTERLY CORNER THEREOF ON THE WESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY PROPERTY; RUNNING THENCE SOUTH 3° 20' EAST ALONG THE SAID WESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY PROPERTY FOR A DISTANCE OF 202.42 FEET; RUNNING THENCE NORTH 84° 28' WEST FOR A DISTANCE OF 219.76 FEET; RUNNING THENCE NORTHERLY IN A DIRECT LINE FOR A DISTANCE OF 202 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

APN: 086-22-023

**AMENDED CONDITIONS OF APPROVAL
ASPEN FAMILY APARTMENTS**

“S” Zone No. SZ2007-0001, Use Permit No. UP2006-0022
and Tentative Map No. MI2007-0002

Amended by: SA2007-0018, MM2007-0002, SA08-0002, PR08-0003 and SA008-0017

1. **“S” Zone Approval:** This “S” Zone Approval No. SZ2007-1 is for a multifamily residential development for 101 affordable family apartments and associated site improvements in accordance with the plans approved on March 14, 2007, and as amended by the conditions below. Any modification to the project as approved will require an “S” Zone Amendment by the Planning Commission. Minor modifications can be submitted to the Planning Division for processing as per Section 42.10 of the zoning code. (P)

2. **Use Permit Approval:** This Use Permit No. UP2006-0022 is for:
 - a. Reduce the required number of parking spaces by 20 for residents and 16 for guests.
 - b. Credit on-street parking spaces adjacent to the development as guest parking.
 - c. Modify required building setbacks from public streets.Any modification to the above exceptions will require approval of a Use Permit Amendment by the Planning Commission. (P)

3. **Parking:** Prior to certificate of occupancy issuance, the applicant shall submit a copy of a lease agreement that requires a statement for each unit rented that limits the number of parking spaces provided per unit and shall submit a copy to the City. (P)

4. **Legal compliance:** This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations, and in conformance with the approved plans. (P)

5. **Asbestos:** Prior to any demolition or removal of any structures onsite, the applicant submit the asbestos survey and if asbestos-containing materials are present, the materials shall be abated by a certified asbestos abatement contractor in accordance with the regulations and notification requirements of the Bay Area Air Quality Management District. (P)

6. **Lead:** Prior to building permit issuance, the applicant shall submit documentation of the removal of all lead contamination and a “Notice of Completion” letter from the Department of Toxic Substance Control. (P)

7. **Park Fee:** ~~Prior to certificate of occupancy issuance,~~ The applicant shall pay a park-in-lieu fee based on the latest Fair Market Appraisal (March 2007) and with credit for private open space pursuant to the term in the Owner’s Particiaption Agreement dated April 17, 2007. (P)

- 8. Private Job Account:** If at the time of application for building permit and for occupancy permit, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
- 9. Noise and Vibration:** Prior to building permit issuance, a detailed analysis of railroad noise and vibrations must be submitted and recommended mitigation measures incorporated in the project plans. (P)
- 10. Signs:** Prior to occupancy permit issuance, the project sign program must be approved by the Planning Commission. (P)
- 11. Solid Waste:** The trash/recycling chutes, bins and enclosure areas shall be kept clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)
- 12. Landscape Irrigation:** Prior to building permit issuance, the applicant shall submit an irrigation plan for all landscape areas. The irrigation plan shall show that all landscape areas, including planter areas and containerized planters, will have an automatic, self-watering system installed that is serviced by a sprinkler head or drip system equipped with a moisture sensor. (P)
- 13. Landscaping:** Prior to issuance of an occupancy permit, the required landscaping shall be planted and in place. (P, C.3 Standard Condition No. 4)
- 14. Landscaping:** All required landscaping shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. Proper maintenance of landscaping requires minimal pesticide use and shall be the responsibility of property owner in perpetuity. The pest reducing landscape maintenance techniques listed in the “Fact Sheet on Landscape Maintenance Techniques for Pest Reduction” in the City of Milpitas *Stormwater C.3 Guidebook*, are incorporated by reference into this condition. (P, C.3 Standard Condition No. 7)
- 15. Landscaping:** City Planning staff shall have approval authority for the installation of comparable substitute pest-resistant plant materials to satisfy the requirements of the approved landscape plan when the approved plants and materials are unavailable for installation, or when other unforeseen conditions prevent the exact implementation of the landscape plan. (P, C.3 Standard Condition No.6)
- 16. Decorative Surfaces:** Prior to building permit issuance, applicant shall add decorative elements (i.e., pavers or tile accents) to plans for private walkways and planter areas, to the approval of the Planning Division. (P)
- 17. Building Features:** Prior to building permit issuance, applicant shall revise building elevations to include:
 - a. Windows recessed four inches (per Midtown Specific Plan Guidelines).
 - b. Roof downspouts draining to landscape areas to the greatest extent possible.
 - c. Covered bicycle parking. (P)

- 18. Screening:** On-site utility transformers, boxes, etc. shall be placed underground (subsurface vaults) or be located at the rear of the property and screened from public view in a manner to the approval of the Planning Division. (P)
- 19. Emergency Access Gates:** Prior to building permit issuance, the applicant shall provide plans for emergency access gates to the approval of the Fire and Planning Departments. (P)
- 20. Stormwater:** Prior to building permit issuance, permit plans shall incorporate the following BMP'S for post construction storm water impacts: (P)
- a. Labeling and maintenance (annual inspections) of storm drain facilities;
 - b. Storm drain inlet cleaning on an annual basis;
 - c. Street sweeping.
- 21. Vector Control:** Prior to any construction or grading of the site, a vector control plan shall be submitted to and approved by the City. (P)
- 22. Air Quality:** Prior to building permit issuance, permit plans shall implement the following Best Management Practices (BMP's) at all project construction sites: (P, MM AQ-1)
- a. Water all active construction areas;
 - b. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard;
 - c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking and staging areas;
 - d. Sweep daily;
 - e. Hydro seed or apply non-toxic soil stabilizers to inactive construction areas;
 - f. Enclose, water or apply non-toxic soil binders to exposed stockpiles;
 - g. Limit traffic speeds on unpaved roads to 15 miles per hour;
 - h. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
 - i. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts. (P)
- 23. Construction Noise:** During construction, the applicant shall implement the following measures to reduce construction noise: (P)
- a. Construction shall be allowed for the hours of 6:00AM to 7:00PM daily, Monday through Sunday, with no noise generating construction on holidays. This provision is in effect until December 31, 2008.
 - b. Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.
 - c. Utilize quiet models of air compressors and other stationary noise sources where the technology exists.
 - d. Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
 - e. Prohibit unnecessary idling of internal combustion engines.

- f. Prior to issuance of a building permit, designate a noise disturbance coordinator who will be responsible for responding to any local complaints about construction noise. During construction, the coordinator will determine the cause of the noise complaints and institute reasonable measures to correct the problem. Maintain during all construction a conspicuously posted telephone number for the public to call the coordinator at the construction site. (P)

24. Air Quality: Prior to any permit issuance, incorporate into building plans appropriate Bay Area Air Quality Management District (BAAMQD) Best Management Practices (BMP's) to reduce vehicle trips as identified in the Summary of Impacts and Mitigation Measures (Section 1.2 of the DEIR and FEIR, Subsection "Air Quality", MM "Regional Development Impacts" for commercial development). Possible measures are (P, MM AQ-2):

- a. Provide physical improvements such as sidewalks, landscaping and bicycle parking that will act as incentives for pedestrian and bicycle modes of travel;
- b. Connect the site with regional bikeway and pedestrian trail systems;
- c. Provide a transit information kiosk;
- d. Provide showers and lockers for employees bicycling or walking to work;
- e. Provide secure and conveniently located bicycle parking and storage for workers and patrons;
- f. Provide electric vehicle charging facilities;
- g. Provide preferential parking for Low Emission Vehicles;
- h. Use specialty equipment (utility carts, forklifts, etc.) that are electrically, CNG or propane powered;
- i. Use reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand. (P)

25. Biology: Appropriately timed surveys shall be conducted by a qualified botanist according to protocols acceptable to the U.S. Fish and Wildlife Service and the California Department of Fish and Game (CDFG), to determine the presence and/or absence of special status plant species. If presence is detected, notification and appropriate protocols for relocation and/or mitigation and monitoring plan, to the approval of the City, for the plant species shall be prepared for long-term protection. The plan shall be implemented either before or concurrently with ground disturbing activities on the property. (P)

26. Biology and Hydrology: The applicant shall modify the existing Stormwater Pollution Protection Plan (SWPPP). This plan shall include provisions to minimize on-site and off-site impacts to biological resources and water quality resulting from project related runoff. Measures shall include the following: (P)

- a. The use of silt fencing, fiber rolls, sediment basins, and other measures to reduce the movement of construction-related sediments into Penitencia Creek and other sensitive habitats.

- b. Installation of grit and oil trap systems, which shall be maintained in perpetuity.
- c. Implementation of BMP's to prevent the discharge of construction debris and soils into Penitencia Creek during site clearing, grading and construction.
- d. As required, dewatering the section of creek channel surrounding the work areas associated with outfall and bridge construction. The dewatering structure shall be to the approval of the City.
- e. The applicant shall retain a construction manager familiar with NPDES permit requirements to monitor construction activities.

27. Stormwater: During all construction activities, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD: (P)

- a. Watering all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;
- b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2 feet freeboard level within their truck beds;
- c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
- e. Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets;
- f. Hydro seed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);
- g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- h. Limit traffic speeds on unpaved areas to 15 mph;
- i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- j. Plant vegetation in disturbed areas as quickly as possible; and
- k. Suspend excavation and grading (all earthmoving or other dust-producing activities) or equipment during periods of high winds when watering cannot eliminate visible dust plumes.

28. Affordability: Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 101 affordable rental-housing units (100% of total number of units) will be available at a housing cost affordable to very low and low-income households. (H)

29. Affordability: The applicant shall provide the following information in the final Owner Participation Agreement, as it relates to the number of affordable housing units, types of units (two and three bedrooms) and the income levels of the proposed affordable housing units as illustrated below. (H)

Income	No. of Units	Type of Units
Very Low and Low-Income	50 Units	Two & three bedrooms
Very Low and Low-Income	50 Units	Two & three bedrooms
Manager Unit	1 Unit	Two bedroom

- 30. Affordability:** As part of the identified public benefit for this project, prior to occupancy, the applicant shall provide to the City of Milpitas City Council for review and approval, an dispersement plan by affordability (i.e., very low, low) exhibit illustrating the location of the affordable housing units within the development. The various levels of affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features, design and amenities. (H)
- 31. Affordability:** Income eligibility for the required number of affordable units shall be determined pursuant to the California Health and Safety Code Sections 50079.5, 50093 and 50105, which provide that the very low income limits established by the U.S. Department of Housing and Urban Development (HUD), are the stated limits for that income category. (H)
- 32. Affordability:** The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable rental units. The Restriction Agreements shall be approved to form by the Milpitas City Attorney’s Office, executed by the City Manager and recorded with the County of Santa Clara. The Restriction Agreements shall require that the long-term affordability of the rental housing units shall remain in effect for the entire lifetime of the project. Any change to this requirement is subject to review and approval by the Milpitas City Council. (H)
- 33. Affordability:** The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (H)
- 34. Affordability:** The established affordable rents for the rental apartment shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the "very low" limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories and State of California Redevelopment Agency Law. The final affordable rents established for the apartment units shall not exceed the maximum allowable rents for “very low” households as defined in the above code sections. Said rents shall be approved for consistency with the definitions by the Housing Division staff. (H)

- 35. Property Management Agreement:** Prior to issuance of a building permit, the developer/property owner shall submit to City Housing Division staff, a copy of the same Property Management Agreement that is sent to the property investors defining the general maintenance and up-keep of the property. Said agreement shall also address maintenance of the Emergency Vehicle Access area. (H)
- 36. Water and Wastewater:** The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
- 37. Water, Sewer and Storm Drains:** Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
- 38. Drainage:** At the time of grading building permit issuance, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development. (E)
- 39. Public Improvements:** Prior to any building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along South Main Street, including but not limited to curb and gutter, pavement, sidewalk, signage and striping, bus stops and bus pads, signal installation at South Main Street and Project main entrance, median installation along Main Street, street lights, street furniture installation, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the Milpitas Midtown Specific Plan

and Main Street Plan Line Study, and all public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)

- 40. Underground Parking:** All proposed underground-parking structures should be designed for the additional surcharge due to traffic loading from proposed and future public streets. (E)
- 41. Community Facilities District:** Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
- 42. Traffic Impact Fee:** ~~Prior to building permit issuance,~~ The developer shall contribute its “fair share” of traffic impact fee in the amount of \$22,579 (based on a Midtown impact fee of \$113 per peak hour trip and Montague Expressway impact fee of \$903 per peak hour trip) pursuant to the terms in the Owner’s Participation Agreement dated April 17, 2007. (E)
- 43. Street Improvements:** ~~Prior to building permit issuance,~~ The developer shall contribute \$115,092 toward its “fair share” costs of South Main Street median improvement (based on a South Main Street Median Island contribution fee of \$278.00 per peak hour trip). At City’s option, the developer may be required to construct the subject improvement in lieu of payment of contribution pursuant to the terms in the Owner’s Participation Agreement dated April 17, 2007. (E)
- 44. Fees:** The developer shall submit the following items with the building permit application and pay the related fees ~~prior to final inspection (occupancy) by the Building Division;~~ pursuant to the terms in the Owner’s Participation Agreement dated April 17, 2007.
- a. Storm water connection fee of \$45,114 based on 2.69 acres @ \$16,771 per acre. The water, sewer and treatment plant fee will be calculated at the time building plan check submittal.
 - b. Water Service Agreement(s) for water meter(s) and detector check(s).
 - c. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
- Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)
- 45. Fees:** ~~Prior to building permit issuance,~~ The developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee pursuant to the Owner’s Participation Agreement dated April 17, 2007. (E)

- 46. Tentative Map:** Prior to any building permit issuance, the developer shall submit a tentative parcel map for review and approval, and record the parcel map prior to construction of building structure above street grade. (E)
- 47. Access Easement:** Prior to building permit issuance, the developer shall either record a reciprocal easement and maintenance agreement with the adjacent property owner on the south regarding the proposed Emergency Vehicle Access (EVA) or provide a recorded document regarding the access and maintenance/installation of private utility. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to roadway, wall along railroad, drainage, lighting, landscaping, and other common area facilities. (E)
- 48. Under grounding:** Prior to building occupancy permit issuance, the developer shall underground all existing wires and remove the related poles within the proposed development, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more. All proposed utilities within the proposed development must also be under grounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state the wire voltage. (E)
- 49. Sight Distance:** The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
- 50. Easements:** Prior to any building permit issuance, the developer shall dedicate necessary easements for public street right of way, public service utilities, water, and sanitary sewer purposes. (E)
- 51. Wall:** Prior to building permit issuance, the developer shall record a 5-foot wide Private Wall Maintenance Easement (PWME), and enter into an encroachment permit agreement with the city for the maintenance of subject wall within the public right of way. The proposed wall plan needs to be included with the building site plan for review and approval. Prior to any building final inspection/occupancy permit issuance, the developer shall construct the proposed wall to the satisfaction of the Building Chief Official and Planning Department requirements. (E)
- 52. Utilities:** All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrub are permitted within City utility easements, where the easement is located within landscape areas. (E)
- 53. Wastewater:** If necessary, developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP Industrial Source Control Inspector at (408) 945-5300. (E)
- 54. Water:** Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant

- are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
- 55. Solid Waste:** Prior to occupancy permit issuance, the developer shall construct solid waste enclosures to house the necessary solid waste bins. The enclosure shall be designed per the Development Guidelines for Solid Waste Services, and enclosure drains must discharge to sanitary sewer line. City review & approval of the enclosures are required prior to construction of the trash enclosures. (E)
- 56. Solid Waste:** Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
- 57. Solid Waste:** Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner or HOA shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the developer shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
- 58. Stormwater:** The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities, which disturb one acre or greater are, viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site-monitoring plan must also be developed by the developer, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)

- 59. Stormwater:** The developer shall comply with Regional Water Quality Control Board's C-3 requirements and implement the following:
- 60. At the time of building permit plan check submittal,** the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements. (E)
- 61. Stormwater: Prior to building permit issuance,** the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities. (E)
- 62. Stormwater: Prior to Final occupancy,** the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. (E)
- 63. Stormwater: Prior to building, site improvement or landscape permit issuance,** the building permit application shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMP's, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review. (E)
- 64. Stormwater: Prior to issuance of Certificate of Occupancy,** the developer shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMP's and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMP's shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (E)
- 65. Demolition:** All utilities shall be properly disconnected before the existing building can be demolished. Show/state how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter for future use, if it is not to be used during the construction. If the existing water services will not be used for the proposed development, the service laterals shall be removed and capped at the main water line. The sanitary sewer

shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. (E)

- 66. Landscape Irrigation:** In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:
- a. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
 - b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)
- 67. Landscape Irrigation:** Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system *when available*. The developer is encouraged to design the entire landscaped area for recycled water connection. If the site is not properly designed for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (E)
- 68. Public Right-of-Way Work:** Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
- 69. Utilities:** The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (E)
- 70. Other Approvals and Permits:** It is the responsibility of the developer to obtain any necessary permits or approvals from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
- 71. Tree Removal:** Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)

- 72. Construction Monitoring:** Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personal parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)
- 73. Flood:** The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". (E)
- 74. Postal Service:** The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. (E)
- 75. Exhibit "S":** At the time of building plan check submittal, the developer shall incorporate the changes shown on Engineering Services Exhibit "S"(dated 3/5/2007) in the design plans and submit three sets of civil engineering drawings showing all proposed utilities to the Land Development Engineer for plan check. (E)

Acronyms

ADA	Americans with Disabilities Act
BMP	Best Management Practices
CDFG	California Department of Fish and Game
C3	Stormwater
E	Engineering Dept. Special Conditions
EIR	Environmental Impact Report for the Midtown Specific Plan
H	Housing Division Special Conditions
MM	Mitigation Measure from the Final Environmental Impact Report for the Midtown Specific Plan
MMC	Milpitas Municipal Code
NPDES	National Pollutant Discharge Elimination System
P	Planning Division Special Conditions
SWPPP	Stormwater Pollution Protection Plan

APPROVED SPECIAL CONDITIONS

MINOR TENTATIVE MAP NO. MI2007-2, Aspen Family Apartments

Planning Commission Approval: March 28, 2007

SPECIAL CONDITIONS

1. This approval is for a Minor Tentative Parcel Map No. MI2006-4 to subdivide an existing 2.69 acre lot into three separate parcels located on 1666 S. Main Street (APN: 086-22-023) as depicted on the Tentative Parcel Map dated March 21, 2007, and as amended by the conditions of approval and for the approval of 101 affordable apartments in the three buildings within the property described on the Tentative Map. (P)
2. The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
3. If at the time of application for parcel map there is a project job account past due balance to the City for recovery of review fees, review of parcel map will not be initiated until the balance is paid in full. (P)
4. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
5. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
6. At the time of grading building permit issuance, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development. (E)
7. Prior to any Building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along South Main Street, including but not limited to curb and gutter, pavement, sidewalk, signage and striping, bus stops and bus pads, signal installation at South Main Street and Project main entrance, median installation along Main Street, street lights, street furniture installation, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the Milpitas Midtown Specific Plan and Main Street Plan Line Study, and all public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)
8. Prior to any building permit issuance, the developer shall submit a parcel map for review and approval, and record the parcel map prior to construction of building structure above street grade. (E)

9. The parcel map shall designate all common lots and easements as lettered lots or lettered easements. (E)
10. Prior to parcel map recordation, the developer shall submit to the City a digital format of the parcel map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
11. The developer shall dedicate on the parcel map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes. (E)
12. Prior to parcel map approval, the developer shall establish a property-owner association. The property-owner association shall be responsible for the maintenance of the landscaping, walls, private streetlights, common area and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval of the City Engineer. (E)
13. Prior parcel map approval, the developer shall either record a reciprocal easement and maintenance agreement with the adjacent property owner on the south regarding the proposed ONE-WAY in-only access or provide a recorded document regarding the access and maintenance/installation of private utility. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to roadway, wall along railroad, drainage, lighting, landscaping, and other common area facilities. (E)
14. All proposed underground parking structures shall be designed for the additional surcharge due to traffic loading from proposed and future public streets. (E)
15. Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
16. ~~Prior to building permit issuance~~ Per article 3.5 of the Owner Participation and Loan Agreement between the Redevelopment Agency of the City and Mil Aspen Associates (OPA), the developer shall contribute its “fair share” of traffic impact fee in the amount of **\$22,579** in accordance with the OPA requirements (based on a Midtown impact fee of \$113 per peak hour trip and Montague Expressway impact fee of \$903 per peak hour trip). (E)
17. Per article 3.5 of the Owner Participation and Loan Agreement between the Redevelopment Agency of the City and Mil Aspen Associates (OPA) ~~Prior to building permit issuance~~, the developer shall contribute **\$115,920** toward its “fair share” costs of South Main Street median improvement-, in accordance with OPA requirements (based on a South Main Street Median Island contribution fee of \$280.00 per peak hour trip). At City’s option, the developer may be required to construct the subject improvement in lieu of payment of contribution. (E)
18. The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division:
 - A. Storm water connection fee of **\$45,114** based on 2.69 acres @ \$16,771 per acre. The water, sewer and treatment plant fee will be calculated at the time building plan check submittal.
 - B. Water Service Agreement(s) for water meter(s) and detector check(s).
 - C. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire. (E)

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).

19. Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee. (E)
20. Prior to building occupancy permit issuance, the developer shall underground all existing wires and remove the related poles within the proposed development, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more. All proposed utilities within the proposed development must also be undergrounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state the wire voltage. (E)
21. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
22. Prior to any building permit issuance, the developer shall dedicate necessary easements for public street right of way, public service utilities, water, and sanitary sewer purposes. (E)
23. Prior to building permit issuance, the developer shall record a 5-foot wide Private Wall Maintenance Easement (PWME), and enter into an encroachment permit agreement with the city for the maintenance of subject wall within the public right of way. The proposed wall plan needs to be included with the building site plan for review and approval. Prior to any building final inspection/occupancy permit issuance, the developer shall construct the proposed wall to the satisfaction of the Building Chief Official and Planning Department requirements. (E)
24. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrub are permitted within City utility easements, where the easement is located within landscape areas. (E)
25. If necessary, developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP Industrial Source Control Inspector at (408) 945-5300. (E)
26. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
27. Prior to occupancy permit issuance, the developer shall construct solid waste enclosures to house the necessary solid waste bins. The enclosure shall be designed per the Development Guidelines for Solid Waste Services, and enclosure drains must discharge to sanitary sewer line. City review & approval of the enclosures are required prior to construction of the trash enclosures. (E)
28. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
29. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner or HOA shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the developer shall submit evidence to the City that a minimum level of

refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)

30. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the developer, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
31. The developer shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following:
 - a. At the time of building permit plan check submittal, the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.
 - b. Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities.
 - c. Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. (E)
32. Prior to building, site improvement or landscape permit issuance, the building permit applications shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review. (E)
33. Prior to issuance of Certificate of Occupancy, the developer shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMPs and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (E)
34. All utilities shall be properly disconnected before the existing building can be demolished. Show/state how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter for

future use, if it is not to be used during the construction. If the existing water services will not be used for the proposed development, the service laterals shall be removed and capped at the main water line. The sanitary sewer shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. (E)

35. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:

- a. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
- b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)

36. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system *when available*. The developer is encouraged to design the entire landscaped area for recycled water connection. If the site is not properly designed for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (E)
37. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
38. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (E)
39. It is the responsibility of the developer to obtain any necessary permits or approvals from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
40. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)
41. Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personal parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)
42. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". (E)

43. The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. (E)
44. Make changes as noted on Engineering Services Exhibit "T"(3/22/2007) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the parcel map or improvement plans will be accepted until this condition is satisfied. (E)

ARCHITECTURAL COMMENTS

45. Applicable codes shall be 2001 CBC, CMC, 2004 CEC, CPC, 2005 California Energy Code and 2002 Milpitas Municipal Code. (B)
46. Civil Engineer licensed in the State of California shall prepare the plans. (B)
47. Allowable building area for building shall be per 2001 CBC section 504. Basic allowable building height and basic allowable building area shall be per Table 5B. (B)
48. Escape and rescue windows from each bedroom shall open directly into public street, alley, yard or exit court as per sec.310.4. (B)
49. Building that houses group A occupancy shall front directly on or discharge to a public street not less than 20 feet in width per 2001 section 303.3. The main entrance to the building shall be located on a public street or on the exit discharge. (B)

ENGINEERING

50. A soil report shall be provided when applying for grading, site improvement and building permit. (B)
51. Paving of driveways and parking lots shall comply with 2002 MMC section II-13-18. (B)
52. Proposed paving shall comply with the 2002 Milpitas Municipal Code section II-13-18. (B)
53. All non-structural concrete flat work shall be as per 2002 Milpitas Municipal Code, section II-13-17.05. (B)
54. Erosion control plan shall be submitted when applying for grading permit per 2002 Milpitas Municipal Code. (B)
55. Prior to issuance of building permit, all the easements including private storm drain easement through adjacent parcels shall be recorded. The developer shall include interim erosion control provisions and schedules in the construction plans for areas, which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained through the rainy season. 2002 Milpitas Municipal Code section II-13-11. (B)

ELECTRICAL

56. All new electrical services shall be underground per 2002 Milpitas Municipal Code section II-6-2.04. (B)

PLUMBING

57. All water piping shall not be located in or under concrete slab within the building as per MMC section II-7-2.02. (B)
58. Submitted drawings are not reviewed nor approved for fire permits and construction. These notes are provided to assist with the Fire Department permit process. (F)
59. Public street transition to the private EVA (Emergency Vehicle Access) easement located at the south side of the project shall meet the requirements for the Land Development Division and the Fire Department. (F)
60. Stairs and EVA modifications at the southeast corner of the project shall meet the requirements of the Land Development Division and the Fire Department. (F)

61. Utilities required for fire protection will be reviewed as part of the public improvements review. (F)

RESOLUTION NO. RA281

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS APPROVING AND AUTHORIZING THE EXECUTION OF AN OWNER PARTICIPATION AND LOAN AGREEMENT WITH MIL ASPEN ASSOCIATES REGARDING THE DEVELOPMENT OF PROPERTY LOCATED AT 1666 SOUTH MAIN STREET, APPROVING A LOAN FOR PROJECT IMPACT FEES, AND AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH SUCH LOAN

WHEREAS, the City Council of the City of Milpitas ("**City Council**") originally approved and adopted the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 ("**Project Area**") by Ordinance No. 192 adopted in 1976 (as subsequently amended, the ("**Redevelopment Plan**")); and

WHEREAS, the Agency seeks development of certain real property located at 1666 South Main Street and known as Santa Clara Assessor's Parcel No. 086-22-023 (the "**Property**") in accordance with the Redevelopment Plan and the Midtown Specific Plan; and

WHEREAS, MIL Aspen Associates, A California Limited Partnership (the "**Developer**") intends to purchase the Property; and

WHEREAS, pursuant to a Memorandum of Understanding approved by the Agency Board and the City Council on April 3, 2007 (the "**MOU**"), the Agency and Developer have negotiated proposed terms and conditions pursuant to which Developer would develop the Property as a 101-unit multi-family affordable housing development together with related improvements (the "**Project**"); and

WHEREAS, the terms and conditions for development and financing of the Project are more particularly described in a proposed Owner Participation and Loan Agreement (the "**OPA**"), a copy of which has been provided to the Agency; and

WHEREAS, the Developer has requested, and pursuant to the MOU, the Agency has agreed to provide a \$2.3 million loan (the "**Loan**") to Developer to fund Project impact fees; and

WHEREAS, pursuant to the MOU, the City Council has approved the deferral of payment of Project impact fees; and

WHEREAS, Developer and Agency staff have negotiated the terms and conditions of the OPA; a Secured Promissory Note (the "**Note**") that provides for repayment of the Loan on a residual receipts basis; a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "**Deed of Trust**") pursuant to which the Agency will be provided a security interest in the Property and the Project to secure repayment of the Loan; an Option and Right of First Refusal Agreement (the "**Option Agreement**") pursuant to which Developer grants to the Agency certain rights to buy the Project upon the expiration of the compliance period for low-

income housing tax credits; and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Regulatory Agreement**") which restrict rents in the Project to levels affordable to very low-income households for a period of 55 years; and

WHEREAS, Developer has obtained a commitment for construction financing for the Project, and the lender providing such financing (the "**Lender**") has asked the Agency to subordinate certain Agency documents as more particularly set forth in the proposed subordination agreement (the "**Subordination Agreement**") a copy of which is on file with the Agency Secretary; and

WHEREAS, the Lender has indicated that it is unwilling to provide financing for the Project without execution and recordation of the Subordination Agreement, and the Developer has indicated that it has been unable to find alternate sources that would enable it to finance the Project without such subordination; and

WHEREAS, Health and Safety Code Section 33334.14 permits subordination of redevelopment agency affordability restrictions provided that: (i) the agency makes a finding that alternative financing is not reasonably available on economically feasible terms without subordination, and (ii) the agency obtains written commitments to protect its investment in the event of a default; and

WHEREAS, the proposed Subordination Agreement provides the Agency with rights to receive notice and an extended period within which the Agency may cure defaults arising under the construction loan documents; and

WHEREAS, the proposed Subordination Agreement provides that Agency consent would be required for any amendment to the construction loan documents that would increase the principal amount of the construction loan.

NOW, THEREFORE BE IT RESOLVED that the Redevelopment Agency of the City of Milpitas hereby:

Section 1. Finds that the development of the Property in accordance with the OPA will further the implementation of the Redevelopment Plan and is in the best interests of the Agency and the City.

Section 2. Approves the OPA and authorizes the Executive Director, or his designee to execute and deliver the OPA substantially in the form on file with the Agency Secretary.

Section 3. Approves the provision of the Loan to Developer pursuant to the terms and conditions set forth in the OPA.

Section 4. Approves the Promissory Note, the Deed of Trust, the Regulatory Agreement, and the Option Agreement and authorizes the Executive Director or his designee to execute and

deliver each such document to which the Agency is a party substantially in the form on file with the Agency Secretary.

Section 5. Finds that without execution of the Subordination Agreement, an economically feasible alternative for financing the Project is not reasonably available and that the terms of the Subordination Agreements provide the Agency with reasonable means of protecting the Agency's investment in the Project in the event of default.

Section 6. Authorizes the Agency Executive Director or his designee to execute the Subordination Agreement substantially in the form on file with the Agency Secretary.

Section 7. Authorizes the Executive Director to execute and deliver such other instruments and take such other actions as necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED this 17TH day of April 2007, by the following vote:

AYES: (5) Chair Esteves, Vice Chair Livengood, and Agency Members
Giordano, Gomez and Polanski

NOES: (0) None

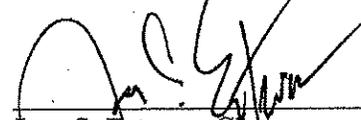
ABSENT: (0) None

ABSTAIN: (0) None

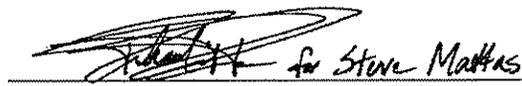
ATTEST:


Mary Lavelle, Agency Secretary

APPROVED:


Jose S. Esteves, Chair

APPROVED AS TO FORM:


Steven T. Mattas, Agency Counsel