

RESOLUTION NO. ____

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 (“**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 (“**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 _____ day of _____ 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary

Jose S. Esteves, Chair

APPROVED AS TO FORM:

Steven T. Mattas, Agency Counsel

OWNER PARTICIPATION AND LOAN AGREEMENT

by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

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

_____, 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 _____, 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

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 [REDACTED] 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. *[Please provide final version of this Exhibit.]*

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 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 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.

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 adjuster 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 (iv) 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 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
5 Park Plaza, Suite 980
Irvine, CA 92614
Attn: _____

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.

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:
Its: Executive Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

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

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

Recording Requested by
and when Recorded, return to:

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF OWNER PARTICIPATION AND LOAN AGREEMENT

This Memorandum of Owner Participation and Loan Agreement (this "**Memorandum**") dated as of _____, 2007, is entered into by and between the Redevelopment Agency of the City of Milpitas, a public agency ("**Agency**") and MIL Aspen Associates, A California Limited Partnership, a California limited partnership ("**Developer**").

1. Consistent with California Community Redevelopment Law (Health & Safety Code Section 33000 *et seq.*) and the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 ("**Project Area**"), Agency and Developer have entered into that certain Owner Participation and Loan Agreement dated as of the date hereof (the "**OPA**"), pursuant to which Developer has agreed to develop certain real property (the "**Property**") located within the Project Area and more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
2. Among other conditions, the OPA provides that Developer shall construct a 101-unit multi-family residential project on the Property which shall include 100 units that Developer shall rent to eligible households of very low-income pursuant to the terms of the OPA and a Regulatory Agreement and Declaration of Restrictive Covenants ("**Regulatory Agreement**") which shall be recorded in Official Records of Santa Clara County substantially concurrently herewith.
3. The OPA further provides that (i) except as permitted by the OPA, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the improvements located thereon without the prior written approval of the Agency; and (ii) any transferee of all or part of the Property shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the OPA which pertain to the portion of the Property transferred, including without limitation, the provisions of the Regulatory Agreement.
4. Developer and Agency have executed and recorded this instrument to give notice of the OPA and the Regulatory Agreement, and the respective rights of Developer and Agency thereunder. Copies of the unrecorded OPA are available at the offices of the Agency, 455 East Calaveras, Milpitas California, and such document is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the OPA, the OPA shall control.

5. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws.
6. The OPA shall bind and inure to the benefit of the Developer and the Agency and their respective successors and assigns.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

AGENCY

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

Executive Director

ATTEST:

Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

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

SIGNATURES MUST BE NOTARIZED.

Exhibit A

PROPERTY

(Attach legal description.)

Recording requested by

and when recorded mail to:

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

CERTIFICATE OF COMPLETION

This Certificate of Completion (the "**Certificate**") is made by the Redevelopment Agency of the City of Milpitas, a public agency (the "**Agency**") effective as of _____, 20__.

RECITALS

A. Agency and MIL Aspen Associates, A California Limited Partnership, a California limited partnership (the "**Developer**") entered into that certain Owner Participation and Loan Agreement (the "**OPA**") dated as of _____, 2007 concerning the redevelopment of certain real property located at 1666 South Main Street in the City of Milpitas, California and more fully described in Exhibit A attached hereto (the "**Property**"). A Memorandum of the OPA was recorded in the Official Records of Santa Clara County as Instrument No. _____, Book _____, Page _____. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the OPA.

B. Pursuant to Section 3.15 of the OPA, the Agency is required to furnish the Developer or its successors with a Certificate of Completion upon completion of construction of the Project in accordance with the OPA and issuance by the City of Milpitas of a Certificate of Occupancy for the Improvements.

C. The Agency has determined that the Improvements and the Project have been satisfactorily completed in accordance with the OPA.

NOW, THEREFORE, Agency hereby certifies as follows:

1. The Project and the Improvements have been satisfactorily completed in conformance with the OPA.

2. All use, maintenance and nondiscrimination covenants contained in the OPA shall remain in effect and enforceable in accordance with the OPA. This Certificate does not constitute evidence of Developer's compliance with those

Exhibit A

PROPERTY
(Attach legal description.)

Recording requested by and
when recorded mail to:

Redevelopment Agency of the
City of Milpitas

455 East Calaveras

Milpitas, CA 95035

Attention: Executive Director

EXEMPT FROM RECORDING FEES PER

GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

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

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 2007 (“**Effective Date**”) by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the “**Agency**”) and MIL Aspen Associates, A California Limited Partnership, a California limited partnership (“**Owner**”). Agency and Owner are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Owner has purchased or has the contractual right to purchase certain real property located at 1666 South Main Street in the City of Milpitas, California and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Owner intends to construct, own and operate on the Property a 101-unit multifamily housing development for very low-income households (the “**Project**”) in accordance with that certain Owner Participation and Loan Agreement (the “**OPA**”) dated as of the date hereof and executed by and between Owner and Agency, a memorandum of which shall be recorded substantially concurrently herewith in the Official Records of Santa Clara County (“**Official Records**”).

C. The OPA provides that no fewer than 100 of the residential units in the Project shall be affordable to and occupied by or available for occupancy by very low-income households for a period of not less than 55 years.

D. Pursuant to the OPA, Agency has agreed to provide to Owner a loan in the amount of Two Million Three Hundred Thousand Dollars (\$2,300,000) (the “**Loan**”) in order to provide partial financing for the Project. The Loan is evidenced by a Secured Promissory Note (the “**Note**”) executed by Owner and dated as of the date hereof, and is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) dated as of the date hereof and executed by Owner for the benefit of Agency. The Deed of Trust will be recorded in the Official Records substantially concurrently herewith.

E. As a condition to its agreement to provide the Loan to Owner, Agency requires the Property to be subject to the terms, conditions and restrictions set forth herein.

F. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project’s Restricted Units for the benefit of the Project occupants. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner’s successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"Area Median Income" or "AMI" means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development ("**HCD**") as published in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

"Eligible Household" means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Subsection 2.3 and Exhibit B.

"Qualifying Rent" means a monthly rent which does not exceed one-twelfth of 30% of the applicable income level set forth in Exhibit B less a utility allowance and such other adjustments as required pursuant to California Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) and the requirements applicable to the use of state and federal low-income housing tax credits.

"Regulations" means Title 25 of the California Code of Regulations.

"Restricted Unit" means a dwelling unit which is reserved for occupancy at a Qualifying Rent by a Very Low-Income household in accordance with and as set forth in Sections 2.1 and 2.2 and Exhibit B.

"Very Low-Income" means an annual gross household income that is less than or equal to fifty percent (50%) of AMI.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the construction and operation of a 101-unit multifamily rental housing development in compliance with the OPA, the development approvals granted by the City of Milpitas, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of Agency. Notwithstanding the foregoing or anything to

the contrary contained herein, if the terms of financing for the Project require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1 Affordability Requirements. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, 100 of the dwelling units in the Project shall be both Rent-Restricted (as defined below) and occupied (or if vacant, available for occupancy) by Eligible Households whose income does not exceed Very Low-Income in accordance with Exhibit B. In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in Exhibit B, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) of the appropriate income level until the required income mix is achieved. A dwelling unit shall qualify as “**Rent-Restricted**” if the gross rent charged for such unit does not exceed the Qualifying Rent for the applicable household income category as set forth in Exhibit B, as adjusted for assumed household size in accordance with California Tax Credit Allocation Committee (“**TCAC**”) guidelines.

2.2 Rents for Restricted Units. Rents for Restricted Units shall be limited to Qualifying Rents. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's adjusted income increases to exceed the qualifying limit for such Restricted Unit. A household which at initial occupancy qualifies as Very Low-Income shall be treated as continuing to be of Very Low-Income so long as the household's income does not exceed 140% of the applicable income limit. In the event the household income of a household that qualified as Very Low-Income at initial occupancy exceeds the applicable income limit for a unit, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted. Whenever a tenant in a unit initially qualifying as a unit at the 45% income limit moves out, that unit will be rented to a tenant that qualifies as an Eligible Household at the 45% income limit. Similarly, whenever a tenant in a unit initially qualifying as a unit at the 50% income limit moves out, that unit will be rented to a tenant that qualifies as an Eligible Household at the 50% income limit.

2.3 Unit Sizes, Design and Location. The Restricted Units shall consist of fifty (50) two-bedroom units and fifty (50) three-bedroom units allocated among affordability categories as set forth in Exhibit B. In renting Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives or works in the City of Milpitas, second preference to Eligible Households in which at least one member is the parent of a person who lives or works in the City of Milpitas, and third preference to Eligible Households in which at least one member lives or works in the County of Santa Clara, unless compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Project.

2.4 Manager's Unit. One dwelling unit in the Project may be used as a resident manager's unit, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

2.5 No Condominium Conversion. Owner shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project during the term of this Agreement.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.2 Non-Discrimination. Owner covenants for and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry, disability or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, nor shall Owner or any person claiming under or through Owner 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 Project. The foregoing covenant shall run with the land. All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Project shall contain the following language:

(a) In Deeds:

"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 a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability 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 the grantee 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 covenant shall run with the land."

(b) In Leases:

“The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made 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, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee 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 land herein leased.”

(c) In Contracts

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

3. Reporting Requirements.

3.1. Tenant Certification. Owner or Owner’s authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate stating total gross household income in such format and with such supporting documentation as Agency may reasonably require. Owner shall retain such certificates for not less than three (3) years, and upon Agency’s request, shall provide copies of such certificates to Agency and make the originals available for Agency inspection.

3.2. Annual Report; Inspections. Owner shall submit an annual report (“**Annual Report**”) to the Agency in form satisfactory to Agency, together with a certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; and (vii) documentation of source of household income.

Upon Agency’s request, Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as Agency may reasonably request from time to time in order to

demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by Agency; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Agency with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Agency to enter and inspect the Property and the Project during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the 55th anniversary of the issuance of the final certificate of occupancy for the Project.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan or Note, or (iii) any reconveyance of the Deed of Trust, unless this Agreement is terminated earlier by Agency in a recorded writing.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term specified in Section 4.1.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The Agency and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Agency, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any

such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Agency an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of Agency.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Agency shall have no responsibility for management or maintenance of the Property or the Project.

6.2 Management Entity. Agency shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Project. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Project 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, Owner 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. Owner 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. Owner shall provide adequate security services for occupants of the Project.

6.3.1 Agency's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from Agency (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Agency (with respect to landscaping, building improvements and general maintenance), then Agency, in addition

to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by Agency in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to Agency upon demand. All such sums remaining unpaid thirty (30) days following delivery of Agency's invoice therefor shall bear interest at the rate of 10% per annum.

6.4 Marketing and Management Plan. Not later than 9 months following issuance of building permits for the Project, Owner shall submit for Agency review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Project tenants. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement, shall submit proposed modifications to Agency for its review and approval.

6.5 Approval of Amendments. If Agency has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within 30 days following Agency's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Agency.

6.6 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public entity, authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

6.7 Insurance Coverage. Prior to issuance of building permits for the Project, and continuing throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in the OPA, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in the OPA; provided however, during such time that lenders or low-income housing tax credit investors providing financing for the Project impose insurance requirements that are inconsistent with the requirements set forth in the OPA, Owner may satisfy the requirements of this Section

by meeting the requirements of such lenders or investors. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of the OPA pertaining to (i) provision to Agency of proof of insurance for the Project, (ii) naming of Agency and the City of Milpitas as additional insureds, and (iii) provision to Agency of notice of cancellation or reduction in coverage.

6.8 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within 120 days after the damage or loss occurs and shall be completed within one year thereafter, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of the Agency Documents (as defined in the OPA) and easements of record, absent the written consent of Agency, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of Agency, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as Agency may reasonably request. Agency agrees that this Agreement may be subordinated to a first deed of trust securing Project construction financing and a first deed of trust securing permanent financing for the Project pursuant to subordination agreements that provide the Agency with reasonably adequate notice and cure rights and protections consistent with the requirements of California Health and Safety Code Section 33334.14(a)(4).

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the OPA or this Agreement, Owner shall not 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, or the Improvements, without the prior written consent of the Agency.

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein 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 the OPA; (iii) the lease of individual

residents to tenants for occupancy as their principal residence in accordance with this 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 OPA, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) the admission of investor limited partners and any transfer of limited partnership interests in Owner in accordance with the Owner'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.

In addition, Agency shall not withhold its consent to the sale, transfer or other disposition of the Project, in whole or in part, provided that (1) the Project is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Agency with respect to the assumption of the Owner's obligations under this Agreement, and upon Agency's request, delivers to the Agency an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three years' experience in the ownership, operation and management of low-income rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

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 Owner, it shall be deemed rejected.

8.3 Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Project for the benefit of a lender other than Agency ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Agency a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Agency shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an

additional 60 days; (iii) provided that Agency has cured any default under Third-Party Lender's deed of trust and other loan documents, Agency shall have the right to foreclose Agency's Deed of Trust and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) Agency shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Agency a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, Agency shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within 10 days.
- (c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within 10 days.
- (d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other Agency Document (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Agency shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than 60 days from receipt of the notice of default.

The limited partners of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that Agency has been given written notice of the address for delivery of notices to the limited partners, Agency shall provide any notice of default hereunder to the limited partners concurrently with the provision of such notice to Owner, and as to the limited partners, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Subsection 11.3.

9.2 Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Agency may proceed with any of the following remedies:

- A. 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 declaratory relief;
- B. Pursuant to the Agency Documents, accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- C. For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;
- D. Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The Agency may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. Owner shall indemnify, defend (with counsel approved by Agency) and hold Agency, the City, and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s development or management of the Property and the Project. Owner’s indemnification obligations under this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that Agency does not and shall not waive any rights against Owner that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Owner, of any of the insurance policies described in this Agreement or the OPA.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by Agency of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Agency to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by Agency at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, 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 upon 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
Attention: Executive Director

Owner: MIL Aspen Associates, A California Limited Partnership
5 Park Plaza, Suite 980
Irvine, CA 92614
Attn: _____

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

With copy to:

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

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

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 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.

11.6 Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Agency is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Agency Executive Director or by any person who shall have been designated by the Agency Executive Director, without further approval by the governing board of the Agency.

11.7 Non-Liability of Agency and Agency Officials, Employees and Agents. No member, official, employee or agent of the Agency or the City of Milpitas shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the Agency, or for any amount of money which may become due to Owner or its successor or for any obligation of Agency under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the Agency Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

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

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Agency Counsel

SIGNATURES MUST BE NOTARIZED.

Exhibit A

PROPERTY

(Attach legal description.)

Exhibit B

Number of Units by Unit Size and Targeted Area Median Income (AMI) Levels

	45% AMI	50% AMI	Sub-Total	Manager's Unit	
2-Bedroom	23	27	50	1	51
3-Bedroom	23	27	50	n/a	50
Total	46	54	100	1	101

SECURED PROMISSORY NOTE

\$2,300,000

Milpitas, California
_____, 2007

FOR VALUE RECEIVED, MIL Aspen Associates, A California Limited Partnership, a California limited partnership (“**Borrower**”), promises to pay to the Redevelopment Agency of the City of Milpitas, a public body corporate and politic (“**Agency**”), in lawful money of the United States of America, the principal sum of Two Million Three Hundred Thousand Dollars (\$2,300,000) or so much thereof as may be advanced by Agency pursuant to the Owner Participation and Loan Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall accrue on the outstanding principal balance at a rate equal to five percent (5%) compounded annually, commencing upon the date of disbursement thereof. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

This Secured Promissory Note (this “**Note**”) has been executed and delivered pursuant to and in accordance with an Owner Participation and Loan Agreement executed by and between Borrower and Agency dated as of _____, 2007 (the “**OPA**”), and is subject to the terms and conditions of the OPA, which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the OPA.

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) dated as of the date hereof, executed by Borrower for the benefit of Agency and encumbering the property described therein. Agency shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, the OPA, and the other Agency Documents. The Regulatory Agreement shall remain effective for the full term thereof and shall survive the repayment of this Note.

PAYMENTS

1.1 PAYMENT DATES; MATURITY DATE. Annual payments on this Note shall be payable on a residual receipts basis with fifty percent (50%) of all Surplus Cash (defined below) payable to Agency toward principal and accrued interest. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of this Note, together with interest accrued thereon and any other sums accrued hereunder shall be payable in full on the thirtieth (30th) anniversary of the date hereof (“**Maturity Date**”).

1.2 ANNUAL PAYMENTS FROM SURPLUS CASH. By no later than June 1 of each year following the issuance of a final certificate of occupancy for the Project, Borrower shall pay to Agency fifty percent (50%) of all Surplus Cash generated by the Project during the previous calendar year to reduce the indebtedness owed under this Note. No later than May 1 of each year following the issuance of a final certificate of occupancy for the Project,

Borrower shall provide to Agency Borrower'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 in accordance with generally accepted accounting principles. No later than November 1 of each year following issuance of the final certificate of occupancy for the Project, Borrower shall provide to Agency a projected budget for the following calendar year which shall include an estimate of Surplus Cash.

1.2.1 “**Surplus Cash**” shall mean for each calendar year during the term hereof, 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.

1.2.2 “**Gross Revenue**” shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received by Borrower 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 Borrower 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 Borrower other than for costs associated with the Project. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances.

1.2.3 “**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**”); 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 Borrower 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 Borrower's expense no less frequently than once every five years throughout the term; partnership management fees payable to Borrower's general partner in the maximum aggregate sum of \$15,000 per year payable only during the first 15 years following issuance of a final certificate of occupancy for the Project; an asset management fee not to exceed \$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 final certificate of occupancy for the Project; and other ordinary and reasonable operating expenses. Payments to Borrower, its partners or affiliates in excess of the limitations set forth in this Section shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

1.2.4 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 1.2.5 below, 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 Borrower, any general partner of Borrower, or any entity controlled by the persons or entities in control of Borrower or any general partner of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses in accordance with the limitations set forth in Section 1.2.3 above even if paid to an affiliate of Borrower or a partner of Borrower: fees paid to a property management agent or resident services agent, partnership management fees, and asset management fees.

1.2.5 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 Borrower'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.

1.3 DUE ON SALE. The entire unpaid principal balance and all interest and other sums accrued hereunder shall be due and payable upon the Transfer (as defined in Section 6.2 of the OPA) absent Agency consent, of all or any part of the Project or the Property or any interest therein other than a Transfer permitted without Agency consent pursuant to the OPA. Without limiting the generality of the foregoing, this Note shall not be assumable without Agency's prior written consent, which consent may be granted or denied in Agency's sole discretion.

1.4 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

1.5 MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made to Agency at 455 Calaveras, Milpitas, California 95035 or such other place as Agency shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by Agency in writing.

2. DEFAULTS AND REMEDIES.

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder (“**Event of Default**”):

(d) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after Agency notifies Borrower thereof in writing.

(e) 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**”), Borrower or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower 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.

(f) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or any general partner thereof or substantially all of such entity’s assets, (iii) orders the liquidation of Borrower or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

(g) The occurrence of a Transfer in violation of Article VI of the OPA.

(h) A default arises under any debt instrument secured by a mortgage or deed of trust on the Project or the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(i) Borrower fails to maintain insurance on the Property and the Project as required pursuant to the Agency Documents and Borrower fails to cure such default within 10 days.

(j) Subject to Borrower’s right to contest the following charges pursuant to the Agency Documents, if Borrower fails to pay taxes or assessments due on the Property or the Project or fails to pay any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within ten (10) days.

(k) If any representation or warranty contained in any Agency Document, or any certificate furnished in connection therewith, or in connection with any request for disbursement of Loan Proceeds proves to have been false or misleading in any material adverse respect when made and continues to be materially adverse to the Agency or the City.

(l) An Event of Default shall have been declared under any other Agency Document and remains uncured beyond the expiration or any applicable cure period.

2.2 REMEDIES. Upon the occurrence of an Event of Default hereunder, Agency may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to Agency under this Note and the other Agency Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of Agency including, without limitation, reasonable attorneys' fees, incurred in connection with Agency's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust. The rights and remedies of Agency under this Note shall be cumulative and not alternative.

2.3 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of ten percent (10%) per annum (the "**Default Rate**"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Agency from exercising any of its other rights or remedies.

2.4 RIGHTS OF LIMITED PARTNERS. Whenever Agency delivers any notice of default hereunder, Agency shall concurrently deliver a copy of such notice to the Limited Partners in accordance with Section 11.3 of the OPA. The Limited Partners shall each have the same right as Borrower to cure or remedy any default hereunder.

3. MISCELLANEOUS.

3.1 WAIVERS; BORROWER'S WAIVERS. No waiver by Agency of any right or remedy under this Note shall be effective unless in a writing signed by Agency. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Agency will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by Agency will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of Agency to take further action without notice or demand as provided in this Note.

To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

3.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 11.3 of the OPA.

3.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any legal action filed in connection with this Note shall be filed in the Superior Court of Santa Clara County, California, or in the Federal District Court for the Northern District of California.

3.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of Agency and its successors and assigns.

3.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and Agency under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make Agency the partner or joint venturer of Borrower.

3.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

3.9 NONRECOURSE. Except as expressly provided in this Section 3.9, neither Borrower nor its partners shall have personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of Agency with respect to the payment of the principal of, and interest on, this Note shall be to the Project, the Property and any other collateral held by Agency as security for this 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 Project and the Property created thereby and any other collateral given to Agency in connection with the indebtedness evidenced hereby and to name the Borrower 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 hereunder or to

require that the Project and the Property shall continue to secure all of the indebtedness owed to Agency hereunder in accordance with this Note and the Deed of Trust; or

(E) limit or restrict the ability of Agency to seek or obtain a judgment against Borrower to enforce against Borrower and its general partners to:

(1) recover under Sections 3.14, 3.17, 8.1, 8.2, 10.1, 11.1 and 11.19 of the OPA (pertaining to Borrower's indemnification obligations), or

(2) recover from Borrower 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:

(a) any fraud or material misrepresentation on the part of the Borrower, any general partner thereof, or any officer, director or authorized representative of Borrower or 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;

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

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

(d) the presence of hazardous or toxic material or waste on the Property or other violation of the Borrower's obligations under Section 8.1 of the OPA or Section 7.9 of the Deed of Trust (pertaining to environmental matters);

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

(f) the material misapplication of the Loan Proceeds;

(g) 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;

(h) 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 Project or the Property; and Project or the Property; and

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

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

BORROWER

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

Recording requested by and when recorded mail
to:
Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attn: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“**Deed of Trust**”) is made as of _____, 2007, by MIL Aspen Associates, A California Limited Partnership, a California limited partnership (“**Trustor**”) to First American Title Company as trustee (“**Trustee**”), for the benefit of the Redevelopment Agency of the City of Milpitas, a public body corporate and politic (“**Beneficiary**”).

RECITALS

A. Trustor owns fee simple title to the land described in Exhibit A attached hereto and incorporated herein by this reference (the “**Land**”). The Land is located within the Milpitas Redevelopment Project Area No. 1 (“**Project Area**”). Trustor intends to construct a 101-unit multifamily residential development on the Land, together with 205 parking spaces, of which 185 spaces will be constructed in a subterranean structure, and related improvements (the “**Project**”).

B. Beneficiary and Trustor have entered into an Owner Participation and Loan Agreement dated as of _____, 2007 (the “**OPA**”) pursuant to which Beneficiary will provide a loan to Trustor in the amount of up to Two Million Three Hundred Thousand Dollars (\$2,300,000) (the “**Loan**”) for the purpose of partially financing the Project. Trustor has issued to Beneficiary a secured promissory note dated as of the date hereof (the “**Note**”) to evidence Trustor’s obligation to repay the Loan. A Memorandum of the OPA will be recorded in the Official Records of Santa Clara County concurrently herewith.

C. As a condition precedent to the making of the Loan, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Project and in Trustor’s fee simple interest in the Land to secure repayment of the Note and performance of Trustor’s obligations under the OPA and under the Loan Documents (defined below).

D. Pursuant to the MIL Aspen Associates, A California Limited Partnership Amended and Restated Agreement of Limited Partnership dated as of April 1, 2007 (the “**Partnership Agreement**”), Trustor intends to bring in Hudson Aspen LLC, a Delaware limited liability company (the “**Investor Limited Partner**”) as an investor limited partner, and Hudson SLP LLC, a Delaware limited liability company (the “**Special Limited Partner**”) (collectively, the

Investor Limited Partner and the Special Limited Partner, including any successors or assigns, are referred to herein as the “**Limited Partners**”).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

a. All buildings, structures, and improvements, now or hereafter located or constructed on the Land (“**Improvements**”);

b. All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, “**Appurtenances**”);

c. All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, “**Equipment**”);

d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, “**Leases**”), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, “**Rents**”);

e. All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding (“**Proceeds**”);

f. All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor (“**Gross Revenues**”);

g. All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, “**Plans**”); and

h. All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, “**Financing**”).

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the “**Property**.”

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the “**Secured Obligations**”): (i) all present and future indebtedness evidenced by the Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Note; (ii) all present and future obligations of Trustor to Beneficiary under the Loan Documents (defined below); (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary’s interests under this Deed of Trust or any other Loan Document as such may be modified, supplemented, amended, renewed or extended. The Note, the OPA, this Deed of Trust, and the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (“**Regulatory Agreement**”) dated as of the date hereof, executed by and between Trustor and Beneficiary and recorded substantially concurrently herewith are hereafter collectively referred to as the “**Loan Documents**.”

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys’ fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary’s right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not

cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the estate encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so

filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall not be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in any financing statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government.

6. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Santa Clara County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a fee simple interest in the Land and the Improvements, (ii) Trustor has good and marketable title to all of the Property; (iii) other than as limited by the Loan Documents, Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the Loan Documents or otherwise approved in writing by Beneficiary ("**Permitted Encumbrances**"), this Deed of Trust creates a valid first lien on Trustor's entire interest in the Property; (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of any deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary; and (vii) the correct address of Trustor's chief executive office is specified in Section 10.2.

Trustor further represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of the Property.

7.2 Payment and Performance of Secured Obligations. Trustor shall promptly pay when due the principal and any interest due on the indebtedness evidenced by the Note, and shall promptly pay and perform all other obligations of Trustor arising in connection with the Secured Obligations or the Loan Documents in accordance with the respective terms thereof.

7.3 Use of Loan Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the Loan Proceeds solely for purposes authorized by the Loan Documents. Trustor shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project, including without limitation all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and Improvements solely for purposes authorized by the Loan Documents, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the Loan Documents.

7.4 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if any Transfer (as defined in the OPA) of the Property, any part thereof, or interest therein occurs in violation of the requirements of the Loan Documents. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.5 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the Loan Documents. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the Loan Proceeds and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Beneficiary following two business days prior notice.

7.6 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due

diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

7.7 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.8 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, Trustor shall at Trustor's expense, maintain insurance policies in accordance with the requirements set forth in the Loan Documents. Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may reasonably require, including without limitation copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required pursuant to the Loan Documents, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy. If any insurance policy required pursuant to the Loan Documents is canceled or the coverage provided thereunder is reduced, Trustor shall, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary 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, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.9 Hazardous Materials. Trustor shall not cause or permit any Hazardous Material (as defined in Section 8.3 of the OPA) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in the construction and operation of residential developments in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "**Indemnitees**") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually "**Claim**" and collectively "**Claims**") arising in connection with the breach of Trustor's covenants and obligations set forth in this Section 7.9 or otherwise arising in connection with the presence or

release of Hazardous Materials in, on, under, or from the Property. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor's own cost and expense, do all of the following:

- a. pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust;
- b. reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust; and
- c. reimburse Indemnitees for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document; (iii) any provision in any of the Loan Documents limiting Beneficiary's recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any Loan Document, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary's failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.9 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the Loan Documents or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.9 is an environmental

provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the “**Environmental Provisions**”), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure (“**Section 736**”) for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

“**Environmental Law**” 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 any Hazardous Material (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 they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.10 Notice of Claims; Defense of Security; Reimbursement of Costs.

a. Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within three business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any

notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

b. Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

c. Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.16 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

d. Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any Property, including books and records pertaining to the Property.

7.11 Indemnification. Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.9) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any Loan Document, (b) any representation by Trustor in any Loan Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Loan Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

7.12. Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise

of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.12, and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.13 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any indebtedness secured hereby in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding the foregoing, so long as the value of Beneficiary's lien is not impaired, insurance and/or condemnation proceeds may be used to repair and/or restore the Project.

7.14 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person liable for payment of any Secured Obligation, (ii) extend the time for payment or otherwise alter the terms of payment of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.15 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid in full, and upon surrender of this Deed of Trust, and the Note, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.16 Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim

of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.16 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

7.17 Limited Partners Right to Cure. The Limited Partners shall have the right to cure any default of Trustor hereunder upon the same terms and conditions afforded to Trustor. Provided that Beneficiary has been given written notice of the address for delivery of notices to the Limited Partners, Beneficiary shall provide any notice of default hereunder to the Limited Partners concurrently with the provision of such notice to Trustor, and as to the Limited Partners, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Section 10.2.

8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events:

a. Beneficiary's declaration of an Event of Default under any Loan Document, subject to the expiration of any applicable cure period set forth in such document;

b. Trustor fails to perform any monetary obligation which arises under this Deed of Trust, and does not cure that failure within ten (10) days following written notice from Beneficiary or Trustee;

c. If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.4 hereof or if any other Transfer occurs in violation of the OPA;

d. Trustor fails to maintain the insurance coverage required under the Loan Documents or otherwise fails to comply with the requirements of Section 7.8 hereof and Trustor fails to cure such default within the time specified in Section 7.8;

e. Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within 10 days.

f. Any representation or warranty of Trustor contained in or made in connection with the execution and delivery of this Deed of Trust or in any certificate or statement furnished pursuant hereto or in any other Loan Document proves to have been false or misleading in any material adverse respect when made;

g. 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**”), Trustor or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor 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.

h. If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof or substantially all of such entity’s assets, (iii) orders the liquidation of Trustor or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

i. The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder’s documents; or

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within ten (10) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary’s reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than sixty (60) days following receipt of notice of default.

8.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in any Loan Document, and any other remedy existing at law or in equity or by statute. All of Beneficiary’s rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys’ fees and costs.

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Note and this Deed of Trust, to be due and payable immediately.

b. Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

c. Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

d. UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

e. Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

f. Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may

postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.10(c); and

b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions.

10.1 Additional Provisions. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust 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:

- receipt;
- a. personal delivery, in which case notice shall be deemed delivered upon receipt;
 - b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
 - c. nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
 - d. facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

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

Trustor: MIL Aspen Associates, A California Limited Partnership

5 Park Plaza, Suite 980
Irvine, CA 92614
Attn: _____

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

With copy to:

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

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

Trustee:

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.4.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of Santa Clara County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the "Property Jurisdiction"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Loan Documents. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary

of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action By Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's Executive Director or by any person who shall have been designated by Beneficiary's Executive Director, without further approval by the governing board of Beneficiary. Beneficiary shall use reasonable best efforts to respond to requests for any such approval, notice, direction, or consent in a timely manner. In any approval, consent, or other determination by Beneficiary required hereunder, Beneficiary shall act reasonably and in good faith.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

10.11 Partial Subordination to Extended Use Agreement. Trustor and the California Tax Credit Allocation Committee have or intend to enter into, or concurrently with the execution and delivery of the Loan Documents are entering into, a Regulatory Agreement (the "**TCAC Regulatory Agreement**"), which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "**Code**"). In the event of a foreclosure of Beneficiary's interest under this Deed of Trust or delivery by the Trustor of a deed in lieu thereof (collectively, a "**Foreclosure**"), the following rule shall apply:

In the event of a Foreclosure, throughout the extended use period specified in the TCAC Regulatory Agreement, with respect to any unit that had been regulated by the TCAC Regulatory Agreement, (i) none of the eligible tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause, including but not limited to, the tenants' ineligibility pursuant to regulations of the HOME Program or Section 42 of the Code), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

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

SIGNATURES MUST BE NOTARIZED.

Exhibit A

LAND

(Attach legal description.)

ACKNOWLEDGMENT

State of California)
) ss.
County of Santa Clara)

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

WITNESS my hand and official seal.

NOTARY PUBLIC

OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT

THIS OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 2007 by and between MIL Aspen Associates, A California Limited Partnership, a California limited partnership (“**Partnership**”), and the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (“**Optionee**”).

RECITALS

A. Partnership owns a fee simple interest in certain real property located in Milpitas, California, which is more particularly described in Exhibit A attached to this Agreement and incorporated herein by this reference (the “**Property**”). Pursuant to an Owner Participation and Loan Agreement dated as of _____, 2007 and executed by and between Optionee and Partnership (the “**OPA**”), Partnership will be developing a low-income housing project on the Property that will consist of 101 multifamily residential units, together with a parking garage and related improvements (“the Project”). A Memorandum of the OPA will be recorded in the Official Records of Santa Clara County substantially concurrently herewith. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the OPA.

B. Optionee has agreed to provide a loan to Partnership in the amount of Two Million Three Hundred Thousand Dollars (\$2,300,000) (the “**Loan**”) to assist in development of the Project. The Loan is of substantial benefit to Partnership and to the viability of its investment in the Property.

C. Partnership has agreed to grant Optionee an option and right of first refusal as more particularly described below, subject to the terms and conditions set forth herein.

D. The parties desire to set forth herein the terms and conditions of the option and right of first refusal granted by Partnership to Optionee.

NOW, THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

GRANT OF OPTION AND REFUSAL RIGHT

Partnership hereby grants to Optionee an option (the “**Option**”) to purchase the Property, the Project, and the Project reserves (collectively, the “**Option Property**”) and an right of first refusal (the “**Refusal Right**”) to purchase all right, title and interest of the Partnership in the Property and the Project, on the terms and conditions set forth in this Agreement. Subject to the provisions set forth in Article VI hereof, the Option and the Refusal Right shall be null and void if the Optionee or its successor in interest fails to qualify as a “government agency” pursuant to Section 42(i)(7)(A) of the Internal Revenue Code of 1986 as amended (the “**Code**”), or any

successor provision, at the times of exercise of the Option or the Refusal Right and purchase of the Property. The Option and Refusal Right shall be senior to any similar option or right of first refusal provided to any other individual or entity.

ARTICLE II

TERM

2.1 Option Term. Subject to Section 2.3, the term of the Option shall commence on the date that is twelve (12) months after the expiration of the fifteenth (15th) full year of the compliance period for the low-income housing tax credits applicable to the Project (the “**Compliance Period**”) as determined under Section 42(i)(1) of the Code, and shall expire on the date that is twelve (12) months thereafter.

2.2 Refusal Right Term. Subject to Section 2.3, the term of the Refusal Right shall commence on the date that is twelve (12) months after the expiration of the fifteenth full year of the Compliance Period and shall expire on the date that is twelve (12) months thereafter.

2.3 Termination Upon Full Repayment of Agency Loan. Provided that no default by Partnership has arisen and remained uncured beyond any applicable cure period under the OPA or any other Agency Document (as defined in the OPA), 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 III

MANNER OF EXERCISING OPTION AND REFUSAL RIGHT

3.1 Option Exercise. Optionee may exercise the Option by delivering written notice of exercise (the “**Option Notice**”) to Partnership, during the option term. The Option Notice shall state that the Option is exercised without condition or qualification.

3.2 Refusal Right Exercise. Prior to accepting any bona fide offer to purchase the Property and Project, Partnership shall notify Optionee of such offer and deliver to Optionee a copy thereof. Partnership shall not accept any such offer unless and until the Refusal Right has expired without exercise, or has been waived in writing by Optionee. Optionee may exercise the Refusal Right by delivery of written notice of exercise to Partnership within ninety (90) days after the Optionee has received Partnership’s notice of a bona fide offer.

ARTICLE IV

PURCHASE PRICE

4.1 Purchase Price Under Option.

(a) The purchase price for the Option Property (the “Option Purchase Price”) shall be equal to the greater of the following amounts:

(1) 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 interest 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 adjuster 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.

(2) 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 4.1(a)(1).

(b) 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.

4.2 Purchase Price Under Right of First Refusal. The purchase price for the Property and Project pursuant to the Refusal Right (the “**Refusal Purchase Price**”) 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 of the OPA); 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.

ARTICLE V

COMPLETION OF SALE

5.1 Title Policy. As a condition to closing, Optionee shall be entitled to a California Land Title Association owner’s policy of title insurance, with premium paid by Partnership, dated as of the close of escrow, in the amount equal to the Purchase Price, showing title of the Property vested in Optionee and, subject only to such liens, encumbrances and other exceptions reasonably approved by Optionee.

5.2 Closing. Escrow shall close no later than one hundred twenty (120) days after

Partnership's receipt of Optionee's written notice of exercise of the Option or the Refusal Right. The Option Purchase Price or the Refusal Purchase Price, as applicable, (the "**Purchase Price**") shall be payable by taking subject to the existing debt and if the Purchase Price exceeds the debt, the balance of the Purchase Price shall be payable in readily available funds. Partnership shall obtain all consents from all holders of mortgages or deeds of trust on the Property whose consent to a sale is required. Except as provided herein, all costs associated with the sale to Optionee shall be paid by Optionee including, without limitation, any transfer taxes, recordation costs and costs related to the assumption of any underlying loans.

ARTICLE VI

ASSIGNMENT OF OPTION AND REFUSAL RIGHT

Optionee may assign this Agreement and all of Optionee's rights hereunder to the City of Milpitas ("**City**"), any other governmental entity or agency, or to a qualified nonprofit organization as defined in Section 42(h)(5)(C) of the Code and that is qualified to own and operate housing developments for low-income persons. If the Optionee ceases to exist, the City shall automatically succeed to the rights of the Optionee hereunder.

ARTICLE VII

QUITCLAIM INSTRUMENT ON TERMINATION OF OPTION AND REFUSAL RIGHT

Upon termination of this Option and Refusal Right pursuant to Article II of this Agreement, Optionee agrees, upon Partnership's request, to execute and deliver a written instrument (in form appropriate for recording if this Agreement or a memorandum thereof has been recorded as of such time) relinquishing and terminating its rights under this Agreement to Partnership within thirty (30) days after termination and to execute, acknowledge and deliver any other documents required by Partnership's title insurance company to remove this Agreement as an encumbrance against the Property.

ARTICLE VIII

MISCELLANEOUS

8.1 Inspection Rights, Right to Direct Use of Reserves. Optionee shall have the right to review the Partnership's financial statements, tax returns, and Partnership Agreement and all amendments thereto, including without limitation, any pro formas prepared to project anticipated tax liabilities upon the sale of the Property. 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 the Agency in its reasonable discretion. The Partnership agrees that it will take reasonable steps to avoid the accrual of tax obligations on the part of the investor limited partner(s) upon the sale of the Property to Optionee pursuant to this Agreement.

8.2 Notices. Except as otherwise specified herein, 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 upon 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
Attention: Executive Director

Developer: MIL Aspen Associates, A California Limited Partnership
5 Park Plaza, Suite 980
Irvine, CA 92614
Attn: _____

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 copy to:

Hudson Aspen LLC
c/o AEGON USA Realty Advisors, Inc.
Mail Stop 5553
4333 Edgewood Road, N.E.
Cedar Rapids, IA 52499-5553
Attn: LIHTC Reporting
Fax: (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

8.3 Attorneys' Fees. In the event of any action, arbitration, or proceeding at law or in equity to enforce any provision of this Agreement or to protect or establish any right or remedy of any party hereunder, the unsuccessful party to the litigation shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred therein by the prevailing party, and if the prevailing party recovers judgment in any action, proceeding, or arbitration, the costs, expenses and attorneys' fees shall be included in and as a part of the judgment.

8.4 No Brokers. Each party hereby agrees to indemnify the other party from and against any real estate brokerage commissions or similar obligations incurred by the indemnifying party as a result of the negotiations or exercise of the Option.

8.5 Memorandum. Contemporaneously with the execution of this Agreement, Partnership and Optionee shall execute, acknowledge and record a Memorandum of Option evidencing this Agreement in the Official Records of the County in which the Property is located.

8.6 Binding on Successors. The rights and obligations of the parties to this Agreement shall inure to the benefit of and bind their respective successors and assigns.

8.7 Captions. The captions used herein are for convenience of reference only and are not part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

8.8 Time of the Essence. Time is of the essence of each and all of the agreements, covenants and conditions of this Agreement.

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

8.10 Entire Agreement, Amendments in Writing. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified except by an instrument in writing signed by Partnership and Optionee.

8.11 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 a single agreement.

SIGNATURES ON FOLLOWING PAGE

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

OPTIONEE:

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS,
A PUBLIC BODY, CORPORATE AND POLITIC

By: _____

Print Name: _____

Title: Its Executive Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

PARTNERSHIP:

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

Exhibit A

PROPERTY

(Attach legal description.)

Recording Requested by
and when Recorded, return to:

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT

This Memorandum of Option and Right of First Refusal Agreement (this "**Memorandum**") is entered into as of _____, 2007, by and between MIL Aspen Associates, A California Limited Partnership, a California limited partnership (the "**Partnership**") and the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the "**Optionee**") with respect to that certain Option and Right of First Refusal Agreement (the "**Agreement**") dated as of the date hereof and executed by and between the Partnership and Optionee.

The Partnership owns a fee simple interest in certain real property located in Milpitas, California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"). Partnership will be developing a low-income housing project on the Property that will consist of one hundred and one (101) multifamily residential units, together with a parking garage and related improvements ("the **Project**").

Pursuant to the Agreement, the Partnership has granted to Optionee an option (the "**Option**") to purchase the Property, the Project, and the Project reserves and a right of first refusal (the "**Refusal Right**") to purchase all right, title and interest of Partnership in the Property and Project.

The term of the Option shall commence on the date that is twelve (12) months after the expiration of the fifteenth (15th) year of the compliance period for the low-income housing tax credits applicable to the Project (the "**Compliance Period**") as determined under Section 42(i)(1) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and shall expire on the date that is twelve (12) months thereafter.

The term of the Refusal Right shall commence on the date that is twelve (12) months after the expiration of the fifteenth (15th) of the Compliance Period, and shall terminate on the date that is twelve (12) months thereafter.

This Memorandum incorporates all of the terms and provisions of the Agreement as though fully set forth herein. In the event of any inconsistency between the Agreement and this Memorandum, the Agreement shall control. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Agreement, of which this is a memorandum. This Memorandum may be executed in counterparts.

IN WITNESS WHEREOF, Partnership and the Optionee have executed this Memorandum as of the date first above written.

OPTIONEE:

**REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS,
A PUBLIC BODY, CORPORATE AND POLITIC**

By: _____

Print Name: _____

Title: Its Executive Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

PARTNERSHIP:

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

SIGNATURES MUST BE NOTARIZED.

Exhibit A

PROPERTY

(Attach legal description.)

State of California)
County of Santa Clara)

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

WITNESS my hand and official seal.

Notary Public

