

***RA8**



To: Felix Reliford
Principal Housing Planner
City of Milpitas

June 25, 2007

From: Jeff Gradinger
Forward Planner
D.R. Horton

Re: **Request to Amend the OPA for Centria West.**
Plan Check No: B-BP2006-721

CC: Dean Mills, Gary Gilbar, Cindy Maxwell,

Dear Felix,

As requested, I am writing this letter to finalize and memorialize D.R. Horton's request for Centria West Unit Type changes, which differ from the originally approved OPA with the City of Milpitas. In addition, this Unit Mix also differs from the Amended OPA approved by Council on May 15, 2007. I have attached hereto a comparison chart that illuminates the differences among the three Unit Mixes.

If you recall, the first changes to the Unit Mix were necessitated as a function of architectural revisions mandated by Fire Code requirements. Upon realizing the drastic variation to the Unit Mix as a result of these revisions, we at DR Horton expressed our dissatisfaction, and directed our architect to conduct a redesign that would facilitate a Unit Mix that more closely approximated the original. Fortunately, Togawa Smith was able to accomplish this task in March of 2007. Unfortunately, we were not informed of their achievement. Therefore, when we proposed the Amended Unit Mix, which Council approved on May 15, the preferred Unit Mix was not offered. This omission is one we deeply regret, and we humbly apologize for any inconvenience caused by this oversight.

We are extremely mindful of the City's vision for this Community, and we believe that this Unit Mix better reflects that vision by more closely replicating that which was approved originally. We greatly appreciate Staff's efforts on our behalf in recommending this Amendment to Council, and look forward to the resultant approval at their Meeting on August 7, 2007.

Best Regards,

A handwritten signature in black ink, appearing to read "JG", written over the printed name.

Jeff Gradinger

	Original Unit Mix	Council Approved 5/15/07	Revised Unit Mix 8/7/07
ONE BR	101	89	96
TWO BR	186	205	193
THREE BR	40	33	38
TOTAL	327	327	327

RESOLUTION NO. RA _____

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF
THE CITY OF MILPITAS APPROVING AN AMENDMENT TO
OWNER PARTICIPATION AGREEMENT BETWEEN THE AGENCY
AND WESTERN PACIFIC HOUSING FOR THE CENTRIA PROJECT**

WHEREAS, by Resolution No. 192 adopted in 1976, the Redevelopment Agency of the City of Milpitas (“**Agency**”) established the Milpitas Redevelopment Project Area No. 1 (“**Project Area**”) and adopted a redevelopment plan for the Project Area (as thereafter amended, the “**Redevelopment Plan**”); and

WHEREAS, the Agency and Fairfield Great Mall, LLC., a California limited liability company (“**Fairfield**”), entered into that certain Owner Participation Agreement dated August 17, 2005 (“**Agreement**”) to provide for the development of a residential project known as the Fairfield, Mid-Town, or Centria Project (“**Project**”); and

WHEREAS, Western Pacific Housing (“**Participant**”) purchased the Project from Fairfield and, in connection therewith, assumed all of Fairfield’s obligations under the Agreement; and

WHEREAS, Agency and Participant entered into that certain amendment dated June 20, 2006 (“**First Amendment**”) to amend the description of the Project; and

WHEREAS, Agency and Participant entered into that certain amendment dated May 15, 2007 (“**Second Amendment**”) to amend the unit mix and number of units of the Project.

WHEREAS, Agency and Participant desire to further amend the Agreement (“**Third Amendment**”) in order to further change the mix of units in the building of the Project known as “Centria West” (“**Centria West**”).

**NOW, THEREFORE, BE IT RESOLVED THAT THE REDEVELOPMENT
AGENCY OF THE CITY OF MILPITAS HEREBY:**

1. Approves the Third Amendment and authorizes the Executive Director or his or her designee to execute said Third Amendment, substantially in the form on file with the Agency Secretary.
2. Authorizes the Executive Director to execute and deliver such other instruments and to take such other actions as necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED at a meeting of the Redevelopment Agency of the City of Milpitas held on this ____ day of August, 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

THIRD AMENDMENT TO OWNER PARTICIPATION AGREEMENT

This Third Amendment to Owner Participation Agreement (“**Third Amendment**”), is made as of this ____ day of _____ 2007 (“**Effective Date**”) by and between the Milpitas Redevelopment Agency, a public body, corporate and politic (“**Agency**”), and Western Pacific Housing, Inc., a Delaware corporation (“**Participant**”, and together with Agency, the “**Parties**”).

A. The Agency and Fairfield Great Mall, LLC, a California limited liability company (“Fairfield”), entered into that certain Owner Participation Agreement dated August 17, 2005 (“Agreement”) to provide for the development of a residential project known as the Fairfield, Mid-Town, or Centria Project (“Project”). All capitalized terms used herein and not defined shall have the meaning ascribed to them in the Agreement.

B. On or about November 23, 2005, Participant purchased the Project from Fairfield and, in connection therewith, Fairfield and Participant entered into that certain Assignment and Assumption of Owner Participation Agreement, pursuant to which, among other things, Fairfield assigned to Participant all of Fairfield’s right, title, and interest in and to the Agreement, and Participant accepted such assignment and agreed to assume, all of Fairfield’s obligations thereunder and, as a result, assumed the role of “Participant” thereunder.

C. Agency and Participant entered into that certain amendment dated June 20, 2006 (“First Amendment”) to amend the description of the Project.

D. Agency and Participant entered into that certain amendment dated May 15, 2007 (“Second Amendment”) to amend the unit mix and number of units of the Project.

E. Agency and Participant desire to further amend the Agreement to provide for further changes in the mix of units in the building of the Project known as “Centria West” (“Centria West”).

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

Section 1. Attachment No. 3, Scope of Developmen is hereby amended to read as follows [deletions in ~~strike through~~; additions in *italics*]:

“The Project shall be developed substantially in accordance with all of the terms and conditions applicable to Vesting Major Tentative Tract Map (MA 2005-4) Site, Architecture Review (SZ 2004-9) and Use Permit No. UP 2005-3, as approved by the City Council of the City of Milpitas on August 16, 2005, as said permits may be amended from time to time. In the event of any inconsistency between the description of the Project set forth in the narrative provisions of this Agreement and in said entitlements, the entitlements shall govern and control

except with respect to the requirement to provide affordable units as set forth in this Agreement and any other applicable Regulatory Agreements.

Notwithstanding the foregoing, the unit mix in the Centria west Building is amended as follows:

1. One-bedroom Units. There shall be ~~89~~ 96 one-bedroom units consisting of ~~680—975~~ 674 – 1,102 square feet in the Centria West Building.

2. Two-bedroom Units. There shall be ~~205~~ 193 two-bedroom units consisting of ~~1000—1222~~ 1,010 – 1,469 square feet in the Centria West Building.

3. Three-bedroom Units. There shall be ~~33~~ 38 three-bedroom units consisting of ~~1342—1454~~ 1,362 square feet in the Centria West Building.

The total number of units to be constructed in the Centria West Building remains 327 units.”

Section 2. All other provisions of the Agreement shall remain unchanged and in full force and effect.

Section 3. This Third Amendment may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

WHEREFORE, the Parties have executed this Amendment as of the date first above written.

Signatures on the Next Page

MILPITAS REDEVELOPMENT AGENCY,
public body corporate and politic

By: Thomas C. Williams
Its: Executive Director

ATTEST:

By: Mary Lavelle
Its: Agency Secretary

APPROVED AS TO FORM:

By: Steven T. Mattas
Its: Agency Counsel

WESTERN PACIFIC HOUSING,
a Delaware corporation

By:
Its: