

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
APPROVING GENERAL PLAN AND MIDTOWN SPECIFIC PLAN
AMENDMENT NO. GM2006-2 TO DESIGNATE APPROXIMATELY 2.72
ACRES LOCATED ON THE CORNER OF SOUTH MAIN AND ABEL STREETS
AS MULTI-FAMILY, VERY HIGH DENSITY**

WHEREAS, the project applicant, Matteson Real Estate Equities, has initiated this General Plan and Midtown Specific Plan amendment to redesignate the property located on the corner of South Main & Abel Streets in the City of Milpitas, State of California, as further depicted in the maps contained in Exhibit A (“Property”), from General Commercial to Multi-Family, Very High Density; and

WHEREAS, this General Plan and Midtown Specific Plan amendment is accompanied by a proposal to change the Zoning District (ZC2006-2) for the Property to Multi-Family, Very High Density with “S” Zone Overlay District “R4-S”; and

WHEREAS, pursuant to and in accordance with the provisions of the California Environmental Quality Act, California Public Resources Code §§ 21000, et seq. (CEQA), an Initial Study/Mitigated Negative Declaration was prepared and properly circulated for public review wherein it was determined that environmental impacts could be reduced to a level of less than significant through incorporation of project requirements and mitigation measures; and

WHEREAS, in accordance with Milpitas Municipal Code section XI-10-54.17-6, and based on the entirety of the record, the City Council finds that school availability is not unreasonably burdened by the project because there is no substantial lack of school availability to serve this project, and further that the applicant has agreed to pay a school impact fee pursuant and according to section XI-10-54.17 of the Milpitas Municipal Code; and

WHEREAS, the Planning Commission held a properly noticed public hearing on July 11, 2007 wherein the Planning Commission heard staff's report, took public testimony, considered the requested amendments and recommended the City Council approve the General Plan Amendment and Midtown Specific Plan Amendment No. GP2006-2; and

WHEREAS, all documents and other materials constituting the record for this matter, upon which the City's decision and its findings are based, are located at the Planning Division of the City of Milpitas, 455 East Calaveras Blvd., Milpitas, CA 95035.

NOW, THEREFORE, BE IT RESOLVED that the foregoing recitals are true and correct and made a part of this Resolution.

BE IT FURTHER RESOLVED that the City Council does hereby find that approval of GP2006-2 is in the public interest and that the General Plan so amended will remain internally consistent.

BE IT FURTHER RESOLVED that based on the entirety of the record, which includes without limitation, the Milpitas General Plan, the Midtown Specific Plan, the application and supporting documentation for the General Plan and Specific Plan amendment, the previously certified EIR (SCH#2000092027) and recently prepared Initial Study/Mitigated Negative Declaration, the Planning Commission's recommendation from its July 11, 2007 meeting, including all staff reports, consultant reports, documents and minutes prepared in connection thereto, the City Council does hereby approve of the General Plan Amendment and Midtown Specific Plan Amendment (GP2006-2) to redesignate the corner of South Main and Abel Streets from General Commercial to a Multi-Family, Very High Density designation.

PASSED AND ADOPTED this ___ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

EXHIBIT A

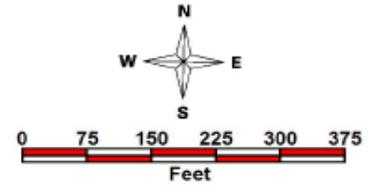
Maps of Property



City of Milpitas
General Plan Amendment
Exhibit A
Planning Commission Approval - July 11, 2007
City Council - September 2007

Legend

-  TOD OVERLAY
-  R4 - MULTI-FAMILY, VERY HIGH DENSITY
-  VTA LRT



Resolution No. _____

Application No. GP2006-2, ZC2006-2, SZ2006-7, MA2006-3, and EA2006-5

Map prepared by the GIS Staff of the City of Milpitas



City of Milpitas
 Milpitas Midtown Specific Plan Map Change
 Exhibit B
 Planning Commission Approval - July 11, 2007
 City Council - September 2007



REGULAR

NUMBER: 38.773

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS
AMENDING CHAPTER 10, TITLE XI OF THE MILPITAS
MUNICIPAL CODE (ZONE CHANGE ZC2006-2)

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by Councilmember _____, and was adopted (second reading) by the City Council at its meeting of _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1. The Zoning Map of the City of Milpitas, which said map was adopted as part of Ordinance No. 38, enacted as Chapter XI-10 (Zoning, Planning, and Annexation) of the Milpitas Municipal Code of the City, is hereby amended by rezoning approximately 2.72 acres located on the corner of South Main & Abel Streets from General Commercial with transit oriented development overlay to multi-family, very high density with "S"-Zone overlay district "R4-S." The City Council finds the amendment is required by good zoning practice, public necessity, convenience and welfare.

SECTION 2. Publication and Effective Date. This ordinance shall take effect 30 days following its passage, and prior to the expiration of 15 days of the passage thereof shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.

SECTION 3. Severability. In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other section or portions hereof shall remain in full force and effect.

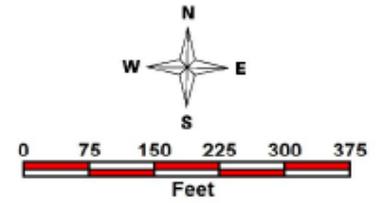


City of Milpitas
 New Zoning Designation
 Sectional District Map No. 568
 Exhibit A

Planning Commission Approval on July 11, 2007
 City Council - September 2007

Legend

-  TOD OVERLAY
-  R4 - MULTI-FAMILY, VERY HIGH DENSITY
-  VTA LRT



Ordinance No. 38.773

Resolution No. _____

Application No. GP2006-2, ZC2006-2, SZ2006-7, MA2006-3, and EA2006-5

Map prepared by the GIS Staff of the City of Milpitas

FORM OF REGULATORY AGREEMENT

**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

THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

MATTESON DEVELOPMENT PARTNERS, INC.

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "**Agreement**") is entered into effective as of _____, 2007 (the "**Effective Date**") by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the "**Agency**") and Matteson Development Partners, Inc., a California corporation ("**Developer**"). Developer and Agency 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 by the City Council of the City of Milpitas, California (the "**City**") by Ordinance No. 192 on September 21, 1976, and subsequently amended and restated on June 17, 2003 by Ordinance No. 192.14 (as so amended and restated, 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 real property known as Santa Clara County Assessors Parcel No. 086-16-100, located at the intersection of South Main Street and Able Street in Milpitas, California, and more particularly described in Exhibit A attached hereto (the "**Property**"). The Property is located within the Project Area.

C. Developer intends to construct on the Property a one hundred and twenty-six (126) unit residential condominium project on the Property ("**Project**").

D. Developer has agreed to sell no fewer than nineteen (19) units in the Project at prices affordable to moderate-income households ("**Restricted Units**").

E. The Parties intend the covenants in this Agreement to run with the land and be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties declare, covenant and agree by and for themselves, administrators and assigns, and all persons claiming under or through them, that the Property shall be held, transferred, encumbered, hypothecated, used, sold conveyed, improved, leased, and occupied subject to the covenants, conditions and restrictions hereinafter set forth, and further agree as follows.

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

1.1 "**Affordable Housing Cost**" shall have the meaning ascribed to such term in California Health and Safety Code Section 50052.5 or successor provision and the regulations promulgated pursuant thereto. Pursuant to the foregoing, as of the Effective Date Affordable Housing Cost means: (a) for Moderate-Income Eligible Buyers whose Gross Income is less than or equal to 110 percent of Area Median

Income adjusted for household size, a Housing Cost that is not less than 28 percent of the Gross Income of the household and which does not exceed the product of 35 percent times 110 percent of the Area Median Income adjusted for household size appropriate for the unit, and (b) for Moderate-Income Eligible Purchasers whose Gross Income exceeds 110 percent of Area Median Income adjusted for household size, a Housing Cost that does not exceed the product of 35 percent of the Gross Income of the household. Pursuant to California Health and Safety Code Section 50052.5(h), the phrase "adjusted for household size appropriate to the unit" shall mean a household of one person for a studio unit, two persons for a one-bedroom unit, three persons for a two-bedroom unit, and four persons for a three-bedroom unit.

1.2 **"Area Median Income"** means the area median income for Santa Clara County, California, adjusted for household size, published periodically by the California Department of Housing and Community Development ("**HCD**") 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.

1.3 **"Eligible Buyer"** means a prospective purchaser of a Restricted Unit who has been pre-qualified by the Agency or its designee and who satisfies all of the following requirements:

(a) Gross Income for the prospective purchaser's household does not exceed Moderate-Income and has not exceeded such amount for the full calendar year immediately preceding the date of purchase.

(b) The prospective purchaser certifies that he or she intends to occupy the Restricted Unit as his or her principal residence.

(c) The prospective purchaser does not own any other residential real property at the time of the purchase.

(d) The prospective purchaser meets all other applicable eligibility requirements of the Agency in effect at the time of the purchase.

1.4 **"Gross Income"** shall have the meaning ascribed to such term in Section 6914 of the Regulations or any successor thereto.

1.5 **"Housing Cost"** shall have the meaning ascribed to such term in Section 6920 of the Regulations or any successor thereto.

1.6 **"Maximum Initial Sale Price"** means the maximum initial price for a Restricted Unit as described in Section 3.

1.7 **"Moderate-Income"** means an annual household Gross Income of not greater than 120% of the Area Median Income adjusted for household size.

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

1.9 **"Restricted Unit"** means a residential unit in the Project which is reserved for sale to an Eligible Buyer at a price that will result in an Affordable Housing Cost in accordance with and as set forth in Section 3.

2. Marketing; Qualification of Eligible Buyers. Developer shall market the Restricted Units to Eligible Buyers in compliance with all applicable fair housing laws and no later than concurrently with the marketing of the remainder of the units in the Project. In Agency's discretion, Agency shall pre-qualify Eligible Buyers or shall delegate such responsibility to another entity or to Developer. Developer shall provide to the Agency proof that prospective purchasers of the Restricted Units qualify as Eligible Buyers at such time and in such form as Agency may reasonably require.

3. Sale of Restricted Units. Developer shall sell the Restricted Units in accordance with all of the following terms and conditions:

(i) The Restricted Units shall be sold only to Eligible Buyers who have been pre-qualified by Agency or its designee at a price not in excess of the Maximum Initial Sale Price.

(ii) The Restricted Units shall be dispersed on the second and third floors of the Project in the locations shown on the Location Plan approved by the Agency's Executive Director and attached to this Agreement as Exhibit B.

(iii) The Restricted Units shall be of the same general design as the other units in the Project and shall be comparable to such units in size, amenities and quality of construction. Notwithstanding the above, the interior finishes and features of the Restricted Units can be different from the Market Rate Units so long as these interior finishes and features are durable, of good quality, and consistent with contemporary standards for new housing.

(iv) The Restricted Units shall be of the following size:

Four (4):	one-bedroom units
Twelve (12):	two-bedroom units
Three (3):	three-bedroom units

(v) In connection with the sale of each Restricted Unit, Developer shall require the purchaser to execute a Resale Restriction Agreement and Option to Purchase ("**Resale Agreement**") in a form provided by Agency and shall cause such Resale Agreement to be recorded in the Official Records of Santa Clara County concurrently with the recordation of the grant deed conveying title of the Restricted Unit. The Resale Agreement shall provide that the Restricted Unit may only be sold to Eligible Households at an affordable price as specified in the Resale Agreement, and will further provide that the Agency shall

have a right of first offer to purchase the Restricted Unit and an option to purchase such unit upon the occurrence of specified triggering events.

3.1 Maximum Initial Sale Price. Developer shall sell the Restricted Units to Eligible Buyers at a price that is not in excess of the Maximum Initial Sale Price as determined by the Agency based upon the then-current Regulations and California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*). The Parties acknowledge that the Maximum Initial Sale Price is intended to enable Eligible Buyers to purchase the Restricted Units at a price that will result in an Affordable Housing Cost for such Eligible Buyers, taking into account the following conditions:

(i) Area Median Income for Eligible Buyers shall be determined at the time the Eligible Buyer is pre-qualified for purchase in accordance with Section 2 hereof;

(ii) Maximum Initial Sale Price shall be determined based on an assumed market rate down payment not to exceed twenty percent (20%); however, the actual down payment provided by the purchasers may be greater or less than this amount.

(iii) the interest rate used to determine the Maximum Initial Sale Price shall be the lower of (a) the prevailing market interest rate when the Eligible Buyer(s) is pre-qualified based on a conventional 30-year fixed rate loan or (b) the interest rate for which Developer has obtained a commitment usable for purposes of the Eligible Buyer(s)' purchase.

3.2 Compliance Monitoring. Prior to the close of escrow for the initial sale of each Restricted Unit, Developer shall forward to the City evidence of the purchaser's status as an Eligible Buyer, copies of the buyer's and seller's settlement statements, and executed copies of all closing documents, including the Resale Agreement.

4. Maintenance of Property. Developer shall maintain the improvements and landscaping on the Property in accordance with the Milpitas Municipal Code, and in a manner consistent with community standards so as to maintain the value of the Property. The Developer shall comply with any and all covenants and agreements established by any Declaration of Covenants, Conditions, and Restrictions affecting the Property, and shall comply with all applicable federal, state and local laws affecting the Property. Notwithstanding the foregoing, Developer's obligations established by this Section 4 may be assumed by a homeowner's association comprised of the owners of the residential condominiums in the Project, and upon such association's assumption of such obligations, Developer shall be released therefrom except to the extent that Developer remains obligated pursuant to the terms of any such declaration or homeowner's association charter and bylaws or other governing documents.

5. Enforcement. The Agency and the City are deemed to be the beneficiaries of this Agreement and the covenants herein, both for and in their own right and for the purpose of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants set forth herein have been provided. If any such covenants are breached, the Agency and the City shall have the right to exercise all rights and remedies at law or in equity, expressly including the remedy of specific performance, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce

the curing of such breaches. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties hereunder are cumulative.

6. Default and Remedies.

6.1 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) Developer's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Developer to cure such default within ten (10) business days.

(b) Subject to Developer's right to contest the following charges, Developer'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 Developer's failure to cure such default within ten (10) business days.

(c) Developer's default in the performance of any term, provision or covenant under this Agreement, and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) business 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 Developer, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Developer'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 sixty (60) days from receipt of the notice of default.

6.2 Remedies. If within the applicable cure period, Developer 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 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; or exercise any rights and remedies available to Agency under applicable law or in equity.

6.3 No Waiver. No failure or delay by the Agency in the assertion of any of its rights and remedies as to any default shall operate as a waiver of any default or of any such rights or remedies.

6.4 Limitation on Damages. In no event shall damages be awarded against City or Agency upon an event of default or upon termination of this Agreement.

6.5 Mortgagee Right to Cure Default.

(a) This Agreement shall be recorded in the Official Records of Santa Clara County and shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien for any loan, deed of trust, or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against

any person or entity, including any lender, deed of trust beneficiary, or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

(b) If Agency receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then Agency shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by Agency that Developer has committed a default hereunder. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the default set forth in the Agency's notice. Acting in the discretion of its Executive Director, Agency may extend the cure periods specified in Section 6 for up to an additional sixty (60) days upon request of a Mortgagee.

7. Covenants to Run with the Land. Developer hereby subjects the Property to the covenants, conditions and restrictions set forth in this Regulatory Agreement. The Parties hereby declare their express intent that all such covenants, conditions and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Developer's successors in title to the Property. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency and the City, and such covenants shall run in favor of the Agency for the entire term of this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed applicable to or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such contract, deed or other instrument.

8. Nondiscrimination.

8.1 Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, or any part thereof, nor shall Developer, or any party or person claiming under or through Developer, 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 of the Property, or any part thereof.

8.2 Anti-Discrimination Clauses in Agreements. Developer and its successors and assigns shall refrain from restricting the rental, sale, or lease of any portion of the Property or the Project to any person on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

8.2.1 In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee himself, or any persons claiming under or through him, 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 land herein conveyed. The foregoing covenants shall run with the land.

8.2.2 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, 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."

8.2.3 In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee itself, 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 of land."

9. Term; Release of Property from Agreement.

(a) Subject to paragraph (b) below, the term of this Agreement shall commence upon the Effective Date, and shall, without regard to technical classification or designation, shall run with the land and be binding on Developer and its successors and assigns for the benefit of the Agency and the City. The covenants contained in Sections 9.1 and 9.2 shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the longest feasible time, but not less than forty-five (45) years.

(b) Notwithstanding the foregoing paragraph, this Agreement shall be terminated and the lien hereof shall be extinguished and released from title to the Property upon the occurrence of all the following: (i) the issuance of final certificates of occupancy for all of the Restricted Units, (ii) the sale of all of the Restricted Units to Eligible Buyers, and (iii) the recordation of a Resale Agreement and Agency Deed of Trust for all Restricted Units. Provided that conditions (i) through (iii) above have been satisfied with regards to an entire building with the Project, then that specific building will be released from this Agreement.

10. Insurance and Indemnity.

10.1 Indemnity. Developer 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 Developer’s development, sale or ownership of the Restricted Units and/or the Project, or Developer’s performance or nonperformance 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, the expiration or earlier termination of this Agreement and the release of the Property or any part thereof from the burdens 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 Insurance. Until the sale of the Restricted Units to Eligible Buyers in compliance with this Agreement, Developer shall maintain at Developer’s expense, comprehensive general liability insurance and property damage insurance with such coverage and limits as may be reasonably requested by Agency and City from time to time, but in no event for less than the sum of Two Million Dollars (\$2,000,000) per occurrence combined single limit. Such policy shall name Agency and City as additional insureds.

11. Miscellaneous.

11.1 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 in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice shall be deemed delivered upon receipt;
- (ii) 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;
- (iii) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- (iv) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that 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: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director
Facsimile: (408) 586-3069

Developer: Matteson Development Partners, Inc.
One Lagoon Drive, Suite 200
Redwood City, CA 94065
Attention: John Bear
Facsimile: (650) 802-1811

11.2 Attorneys' Fees. In the event that Agency, City or Developer brings an action by reason of the breach of any condition, covenant, representation or warranty contained herein, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable attorneys' fees and costs. Attorneys' fees shall include attorney's fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

11.3 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 and duly recorded in the Official Records of Santa Clara County.

11.4 Severability. If any provision 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.

11.5 Captions; 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.

11.6 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.

11.7 Entire Agreement. This Agreement, including Exhibits A and B attached hereto and incorporated herein by this reference contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements with respect to the subject matter hereof.

11.8 Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Each reference in this Agreement to a specifically named Party shall be deemed to apply to any successor or assign of such Party who has acquired an interest in the Property.

11.9 Due Authorization. Developer hereby represents and warrants that all actions necessary on the part of Developer to authorize the execution of this Agreement and to undertake the actions contemplated hereby have been undertaken and the persons executing this Agreement on behalf of Developer have been duly authorized to do so.

11.10 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.

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

11.12 Further Assurances. The Parties agree to execute such instruments and to undertake such actions, as may be necessary to effectuate the intent of this Agreement.

11.13 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.

11.14 Time is of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

11.15 Future Enforcement by City. The Parties hereby agree that should the Agency cease to exist as an entity at any time during the term of this Agreement, the City shall have the right to enforce all of the terms and conditions herein, unless the Agency has previously specified another entity to enforce this Agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Agency and Developer have executed this Regulatory Agreement and Declaration of Restrictive Covenants 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

MATTESON DEVELOPMENT PARTNERS, INC.
a California corporation

By: _____
John A. Baer
Senior Vice President, Development

SIGNATURES MUST BE NOTARIZED.

Exhibit A

PROPERTY

(Attach legal description.)

LEGAL DESCRIPTION

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

Parcel 2 as shown upon that certain Parcel Map filed for record on February 09, 1990 in Book 610 of Maps, at pages 20 and 21, Santa Clara County Records.

APN: 086-16-100

ARB: 086-16-063, 064.01

Exhibit B

LOCATION PLAN

(Attach map or depicting location of Restricted Units.)