



Mid-Peninsula Housing Coalition

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RECEIVED

SEP 05 2008

September 5th, 2008

Felix Reliford
Department of Planning
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Re: Amendment of Regulatory Agreement for Devries Place Senior Apartments

Dear Mr. Reliford:

I write to request that the City of Milpitas Redevelopment Agency ("Agency") approve and enter into an amendment to the regulatory agreement between MP Milpitas Affordable Housing Associates, L.P. and the Agency with respect to DeVries Place Senior Apartments located at 163 and 153 N. Main Street.

As we have discussed, the regulatory agreement currently requires the development to be restricted for occupancy by households in which *at least one member* is a person 62 years of age or older. In recent months we have come to believe that although this restriction is consistent with state law, it may not be consistent with federal law.

Both state and federal law define "senior housing" to be housing that elects one of two possible age restrictions. Section 51.3(b) of the California Civil Code defines a "qualifying resident" or "senior citizen" as "a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development". In California, a senior housing development may elect to apply either the 62 year old or 55 year old definition. However, the federal Fair Housing Act (Section 807 of 42 U.S.C. 3607) protects the age restriction of "housing for older persons" which is housing "intended for and solely occupied by persons 62 years or older" or a development in which "at least 80% of occupied units are occupied by at least one person who is 55 years or older".

In view of the language of the Fair Housing Act, we believe that all residents of Devries Place Senior Apartments must be solely occupied by persons 62 years or older in order for the development to qualify as "senior housing" under federal law. We therefore request amendment of the regulatory agreement with the Agency in order to make local regulations on the development consistent with both state and federal law. Lease-up at Devries Place Senior Apartments is nearly complete and was conducted in compliance with the Fair Housing Act.



Equal Housing Opportunity-Professionally managed by Mid-Peninsula Housing Management Corporation

If the enclosed amendment is acceptable to the Agency, please have an authorized officer of the Agency sign the amendment in the presence of a notary public and return the signed and notarized document to me for recordation. Thank you and please feel free to contact me at 650-356-2938 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean Thornton', written in a cursive style.

Sean Thornton
Project Manager
Mid-Peninsula Housing Coalition

Enclosure

Recording requested by and
When recorded mail to:

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE SEC. 27383

FIRST AMENDMENT TO
AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS

This First Amendment to Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("First Amendment") is made as of _____, 2008, by and between the **Redevelopment Agency of the City of Milpitas**, a public body, corporate and politic ("Agency") and **MP Milpitas Affordable Housing Associates**, a California limited partnership ("Owner").

Agency and Owner have previously entered into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of August 1, 2006, and recorded against the Property described on Exhibit A to this Agreement on August 25, 2006, in the Official Records of Santa Clara County as Document No. 19079613 (the "Agreement"). Capitalized terms used in this First Amendment and not defined shall have the meanings set forth in the Agreement.

The parties desire to amend the Agreement to require that all household members occupying residential units in the Project be at least 62 years of age, with limited exceptions.

Now, therefore, for good and valuable consideration, the parties agree as follows:

1. Amendment to Agreement – Senior Housing. Section 2.1 of the Agreement is amended in its entirety to read as follows:

2.1 Senior Housing. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, no fewer than 102 of the dwelling units in the Project shall be restricted for occupancy by households in which each member is a person 62 years of age or older (each a "Qualifying Resident"), except as follows:

(a) Each such dwelling unit may additionally be occupied by a "Permitted Health Care Resident," defined as a person hired to provide live-in, long-term, or terminal health care to a Qualifying Resident, or a family member of the Qualifying Resident providing that care. For the purposes of this subsection (a), the care provided by a Permitted Health Care Resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both. A Permitted Health Care Resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the Qualifying Resident from the dwelling unit only if both of the following are applicable:

- (i) The Qualifying Resident became absent from the dwelling unit due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.
- (ii) The absent Qualifying Resident or an authorized person acting for the Qualifying Resident submits a written request to the Owner, stating that the Qualifying Resident desires that the Permitted Health Care Resident be allowed to remain in order to be present when the Qualifying Resident returns to reside in the Project.
- (iii) Upon written request by the Qualifying Resident or an authorized person acting for the Qualifying Resident, the Owner shall have the discretion to allow a Permitted Health Care Resident to remain for a time period longer than 90 days from the date that the Qualifying Resident's absence began, if it appears that the Qualifying Resident will return within a period of time not to exceed an additional 90 days.

(b) Residency by other persons in such dwelling units shall be in compliance with section 51.3 of the California Civil Code.

2. Miscellaneous.

(a) This First Amendment shall be recorded against the Property in the Official Records of Santa Clara County. Owner shall obtain any consents or approvals required as a condition to such recordation.

(b) Except as amended by this First Amendment, the Agreement shall continue unmodified and in full force and effect.

(c) Each party represents and warrants that it has the full power and authority to enter into this First Amendment.

In witness whereof, the Parties have executed this First Amendment as of the date first written above.

MP MILPITAS AFFORDABLE HOUSING ASSOCIATES,
a California limited partnership

By: MP Milpitas Affordable Housing LLC,
a California limited liability company,
its general partner

By: Mid-Peninsula Scotts Valley, Inc.,
a California nonprofit public benefit corporation,
its sole member

By: _____
Title: _____

**REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS**

By: _____
Title: _____

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Agency Counsel

Signatures Must be Notarized

EXHIBIT A
Legal Description of the Property

EXHIBIT "A"
LEGAL DESCRIPTION
Senior Housing Site

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

Being a portion of Parcel 2, as said Parcel is shown on that certain Parcel Map which was filed for record March 24, 1972, in Book 298 of Maps, at Page 24, Santa Clara County Records and being described as follows:

Beginning at the northwest corner of said Parcel 2, thence along the northerly line of said Parcel 2, North 75°57'27" East 281.30 feet (the bearing of said northerly line being taken as North 75°57'27" East, for the purposes of this description); thence leaving said northerly line, South 10°27'49" East 195.10 feet; thence South 75°56'29" West 277.99 feet; thence North 08°16'10" West 88.22 feet; thence continuing along the westerly line of said Parcel 2, North 14°02'33" West 107.03 feet to the **Point of Beginning**.

Said described parcel containing 1.239 acres, more or less.

Attached hereto is a plat labeled "Plat to Accompany Legal Description" and by this reference is made a part hereof.

The bearing of the monument line of North Main Street, North 10°27'49 West, as shown on that Record of Survey filed for record on June 28, 2005 in Book 788 of Maps at Page 29, Santa Clara County Records, was used as the Basis of Bearings for this description. The bearing of said monument line is shown as North 11°29'32" West on said referenced Parcel Map recorded on March 24, 1972, in Book 298 of Maps, at Page 24, Santa Clara County Records



Kevin R. Weiss, P.L.S. 7139

Date

11/30/2005

Prepared by:

JMH Weiss, Inc.

