

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING
THE AMENDMENT TO THE SUBDIVISION AGREEMENT FOR MIL ASPEN
FAMILY APARTMENTS**

WHEREAS, the Redevelopment Agency of the City of Milpitas, and MIL Aspen Associates (“Developer”) entered into an Owner’s Participation Agreement (“OPA”) in April 2007 to regulate the development and financing of a 101-unit multi-family affordable housing development, referred to as the MIL Aspen Family Apartments; and

WHEREAS, in the OPA the Agency agreed to defer the payment of the impact fees until the later of (i) the date of the 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 the issuance of the final certificates of occupancy; and

WHEREAS, the City of Milpitas (“City”) and Developer entered into a Subdivision Improvement Agreement (“SIA”) for the construction of specific improvements related to the MIL Aspen Family Apartments; and

WHEREAS, the SIA conditioned certain City’s impact fees to be paid prior to building permit issuance, contradicting the OPA.

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

1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is authorized to execute the amendment to the Subdivision Improvement Agreement to incorporate the terms set forth in the Owner’s Participation Agreement and subject to approval as to form by the City Attorney.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

Subdivider: MIL Aspen Associates

Project Name: Aspen Family Apartment

File No.: 100.03.491

Private Job Account No.: 3199

Improvement Plan No.: 2-1072

Tract/Parcel Map No.: _____

Council Approval Date: _____

Completion Period: _____

CITY OF MILPITAS

AMENDMENT No. 1 TO THE SUBDIVISION IMPROVEMENT AGREEMENT

THIS AMENDMENT, executed this _____ day of _____, 2009, at Milpitas, California, by and between the **City Of Milpitas**, a municipal corporation of the State of California, (hereafter referred to as "CITY"), and **MIL Aspen Associates**, a California Limited Partnership, (hereafter referred to as "SUBDIVIDER").

RECITALS

WHEREAS, the **Redevelopment Agency of the City of Milpitas** ("hereafter referred to as AGENCY") and SUBDIVIDER entered into a Owner's Participation Agreement ("OPA") on April 17, 2007 to regulate the development and financing of a 101-unit multi-family affordable housing development, referred to as the MIL Aspen Family Apartments; and

WHEREAS, in the OPA the AGENCY agreed to defer the payment of the CITY impact fees until the later of (i) the date of the 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 the issuance of the final certificates of occupancy; and

WHEREAS, the CITY and SUBDIVIDER entered into a Subdivision Improvement Agreement ("SIA") for the construction of specific improvements related to the MIL Aspen Family Apartments; and

WHEREAS, the SIA conditioned certain CITY impact fees to be paid prior to building permit issuance, contradicting the OPA; and

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby agree to amend the SIA as follows:

I. Paragraph 14 is appealed in its entirety and amended to read as follows:

14. SUBDIVIDER agrees to comply with all special conditions and notes of approval for this development, pay all fees, and costs and expenses incurred by CITY in connection with said subdivision (including, but not limited to: office check of maps and improvement plans, field checking, staking and inspection of street monuments, construction water, wet taps, testing and inspection of improvement). SUBDIVIDER shall maintain Project/Private Job Account No. **3199** for this purpose with additional deposits as required by CITY.

A. Fees to be paid per Article 3.5 of the Owner Participation and Loan Agreement between the Redevelopment Agency of the City of Milpitas and MIL Aspen Associates (OPA):

a) Plan-check and Inspection (Partial Deposit) (10% of Construction Costs Estimate)	(PJ3199-13-2500)	\$ <u>50,000.00</u>
b) Right-of-Way Reimbursement Fee	(310-3614-XXXX50)	<u>N/A</u>
c) Other <u>Traffic Impact Fee</u>	(100-3718)	\$ <u>138,499.00</u>
Sub-total:		\$ 188,499.00

B. Fees to be paid at the time of building permit issuance (except for the Parksite fee, which shall be paid per the OPA):

a) Water Connection Fee (101 units @ \$1,164.00 per unit)	(402-3715)	\$ <u>79,022.00</u>
b) Potable Water Meter Fee (9 meters various sizes)	(400-3662)	\$ <u>10,468.08</u>
c) Recycled Water Meter Fee	(406-3622)	<u>N/A</u>
d) Sanitary Sewer Connection Fee (101-units @ \$1,406.00 per unit)	(452-3715)	\$ <u>87,001.00</u>
e) Sewer Treatment Plant Fee (101 units @ \$690 per unit)	(452-3714)	\$ <u>68,488.00</u>
f) Sewer Bypass Benefit Fund	(HA1320-2500)	<u>N/A</u>
g) Storm Drain Connection Fee	(340-3711)	\$ <u>45,114.00</u>
i) Permit Automation Fee (2.5% of above fees, excluding PJ)	(505-3601)	\$ <u>10,714.80</u>
h) Parksite Fee		
1. Park Dedication In-Lieu Fee	(320-3712)	\$ <u>2,135,911.00</u>
2. Permit Automation Fee (2.5% Permit Automation Fee for Parksite Fee)	(505-3601)	\$ <u>53,397.78</u>
Sub-total:		\$2,490,116.66
Total:		\$2,678,615.66

II. Exhibit A, Paragraph 3 is appealed in its entirety and amended to read as follows:

3. The SUBDIVIDER agrees to pay to the CITY a Traffic Impact Fee of \$138,499.00, per Article 3.5 of the Owner Participation and Loan Agreement between the Redevelopment Agency of the City of Milpitas and MIL Aspen (OPA), and 2.5% building permit automation fee.

III. All other provisions of the SIA shall remain in full force and effect. This Amendment is executed on the date written above.

CITY OF MILPITAS

**MIL Aspen Associates,
a California Limited Partnership**

By: _____
Thomas C. Williams, City Manager

By: MIL Aspen Family Housing, LLC
Its Administrative General Partner

By: Global Premier Development, Inc.
Its Member

By: _____
Andrew Hanna
Its President

APPROVED AS TO FORM:

By: _____
Michael J. Ogaz, City Attorney

ATTEST:

By: _____
Mary Lavelle, City Clerk

** It is essential that the signatures be acknowledged before a California Notary Public and to attach the proper acknowledgment.

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 2009.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 2009)
_____)
_____)
_____)
_____)
_____)

THIS JURAT MUST BE COMPLETED
BY A NOTARY IF THE VERIFICATION
IS EXECUTED OUTSIDE OF CALIFORNIA

(Sign)

(Type)

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form. A power of attorney is not enough.

Form Approved:
