

RESOLUTION NO. _____

A RESOLUTION OF THE REDEVELOPMENT AGENCY AND THE CITY OF MILPITAS APPROVING THE AMENDMENT TO THE MEMORANUM OF UNDERSTANDING AND DISPOSITION AND DEVELOPMENT AGREEMENT AND PARCEL “C” REGULATORY AGREEMENT WITH KB HOME SOUTH BAY, INC.

WHEREAS, the Redevelopment Agency of the City of Milpitas (“Agency”) and KB Home South Bay, Inc. (“KB Home”) entered into a Disposition and Development Agreement dated January 18, 2005 (the “Original DDA”) with respect to certain real property located in Milpitas, California, described in the Original DDA as Parcel “C”; and

WHEREAS, Agency, KB Home, the City of Milpitas (“City”) and County of Santa Clara (“County”) entered into a Memorandum of Understanding dated May 18, 2004 (the “Original MOU”) relating to affordable housing on the Elmwood property located in Milpitas, California, and described in the Original MOU as Parcel “C” and Parcel “D”; and

WHEREAS, pursuant to the Original DDA and Original MOU, eighty five (85) of the residential units to be constructed on Parcel “C” were designated for sale to qualified moderate income purchasers (the “Parcel “C” Affordable Units). In addition, the Original DDA and Original MOU provided that in the event the Parcel “C” affordable units could not be sold at a sales price equal to or more than the minimum sales prices, the Agency and KB Home were to share in the cost of the Agency-provided silent-second mortgages by an amount necessary to entice a qualified buyer to purchase the unit; and

WHEREAS, as the result of current real estate market conditions and resulting lack of sufficient qualified moderate income purchasers as of the reference date, only eighteen (18) of the Parcel “C” affordable units have been sold and deeded to qualified moderate income purchasers as of the date of this Resolution; and

WHEREAS, the parties wish to amend the Original DDA, Original MOU, and Parcel “C” Regulatory Agreement to reduce the number of Parcel “C” affordable units from eighty-five (85) to thirty-nine (39), with eighteen (18) of them having already been sold and deeded to a qualified moderate income purchaser as of the date of this Resolution, and reduce the price of the remaining twenty-one (21) affordable homes to be available to low income purchasers. In exchange, KB Home agrees to pay an in lieu affordable housing fee of thirty-seven-thousand dollars (\$37,000) (the “In Lieu Payments”) for each of the forty-six (46) unsold Parcel “C” affordable homes to be released, totaling one-million-seven-hundred-two-thousand dollars (\$1,702,000). One half of the In Lieu Payments (eight-hundred-fifty-one-thousand dollars (\$851,000) shall be paid to the Agency and the other half (eight-hundred-fifty-one-thousand dollars (\$851,000) to the County upon recordation of the Parcel “C” Regulatory Amendment; and

WHEREAS, the Agency and City have determined that amending the Original MOU, the Original DDA and the Parcel “C” Regulatory Agreement will assist the Agency in increasing the level of affordability in the development on Parcel “C” and fulfilling the regional housing goals of the City of Milpitas. In addition, the Agency wishes to better leverage its funds to assist a higher percentage of low and moderate income households within the Agency’s jurisdiction; and

WHEREAS, the parties hereto also desire to remove the construction of the Abbott Connection work (described in the Original DDA) from the list of Approved Infrastructure Work and Approved Mitigations. By removal of the above referenced Approved Infrastructure Work and Approved Mitigations item, the Agency and KB Home wish to free up Agency funds to pay for other allowed reimbursements, costs and expenditures under the Original DDA; and

NOW, THEREFORE, the Board of the Redevelopment Agency and the City Council of the City of Milpitas hereby find, determine, and resolve as follows:

1. The Board and City Council have considered the full record before them, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to them. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager/Executive Director is authorized to execute amendments to the Disposition and Development Agreement, Memorandum of Understanding, and the Parcel "C" Regulatory Agreement and subject to approval as to form by the City Attorney/Agency Counsel.

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

AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

This Amendment to Disposition and Development Agreement (“Amendment”), dated for reference purposes only as of December 21, 2008 (the “Reference Date”), is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS (“Agency”), KB HOME SOUTH BAY INC., a California corporation (“KB South Bay”) and LB/L-KB TERRA SERENA LLC, a Delaware limited liability company (“Terra Serena”).

RECITALS

A. Agency and KB South Bay entered into that certain Disposition and Development Agreement dated as of January 18, 2005 (the “Original DDA”) with respect to certain real property located in Milpitas, California, and described in the Original DDA as Parcel “C” and Parcel “D”. Parcel “C” and Parcel “D” are more particularly described in the Original DDA and the Regulatory Agreements described below.

B. Pursuant to the Original DDA, Agency conveyed Parcel “D” to KB South Bay by Grant Deed recorded in the Official Records of Santa Clara County, California (“Official Records”) on April 7, 2005 as Instrument 18307394. In connection with the conveyance of Parcel “D” to KB South Bay, Agency and KB South Bay entered into that certain Agreement Affecting Real Property dated as of March 15, 2005 and recorded in the Official Records on April 4, 2005 as Instrument 18307395 (the “Parcel “D” Regulatory Agreement”).

C. In accordance with the Original DDA, KB South Bay assigned its interest in and to the Original DDA, but only as it relates to Parcel “C”, to Terra Serena. Pursuant to the Original DDA, Agency conveyed Parcel “C” to Terra Serena by Grant Deed recorded in the Official Records on November 10, 2005 as Instrument 18674191 (the “Parcel “C” Deed”). In connection with the conveyance of Parcel “C” to Terra Serena, Agency and Terra Serena entered into that certain Agreement Affecting Real Property dated as of November 10, 2005 and recorded in the Official Records on November 10, 2005 as Instrument 18674192 (the “Parcel “C” Regulatory Agreement”, together with the Parcel “D” Regulatory Agreement being, collectively, the “Regulatory Agreements”).

D. Pursuant to the Original DDA, eighty five (85) of the residential units to be constructed on Parcel “C” were designated for sale to qualified Moderate Income purchasers (the “Parcel “C” Affordable Units). In addition, the Original DDA provided that in the event the Parcel “C” Affordable Units could not be sold at a sales price equal to or more than the Minimum Sales Prices, the Agency and Terra Serena were to share in the cost of the Agency-provided silent-second mortgages by an amount necessary to entice a qualified buyer to purchase the unit.

E. As the result of current real estate market conditions and resulting lack of sufficient qualified Moderate Income purchasers as of the Reference Date, only eighteen (18) of the Parcel “C” Affordable Units have been sold and deeded to qualified Moderate Income purchasers as of the Reference Date. The sixty seven (67) Parcel “C” Affordable Units which have not been sold and deeded to qualified Moderate Income purchasers

as of the Reference Date are identified on Exhibit A attached hereto (the “Unsold Parcel “C” Affordable Units”).

F. Agency desires to increase the level of affordability in the development on Parcel “C” in order to fulfill the regional housing goals of the City of Milpitas. In addition, the Agency wishes to better leverage its funds to assist a higher percentage of low and moderate income households within the Agency’s jurisdiction.

G. The parties hereto also desire to remove the construction of the Abbott Connection work (described in the Original DDA) from the list of Approved Infrastructure Work and Approved Mitigations. By removal of the above referenced Approved Infrastructure Work and Approved Mitigations item, the Agency and Terra Serena wish to free up Agency funds to pay for other allowed reimbursements, costs and expenditures under the DDA.

H. The Agency has determined that amending the Original DDA and the Parcel “C” Regulatory Agreement on the terms and conditions set forth in this Amendment will assist the Agency in accomplishing the goals described in Recital F and G above, will effectuate the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, are in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and are in accord with the public purposes and provisions of all applicable federal, state, and local laws and requirements, including without limitation State Redevelopment laws.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, Agency, KB South Bay and Terra Serena agree as follows:

1. Effective Date; Defined Terms. As used in this Amendment, “Amendment Effective Date” means the date that all of the following have occurred (i) three (3) copies of this Amendment have been fully executed by Agency, Terra Serena and KB South Bay, (ii) five (5) copies of that certain Amendment to Memorandum of Understanding (“MOU Amendment”) which have been signed by KB South Bay and Terra Serena and delivered to Agency concurrently with the delivery of this Amendment (the “MOU Amendment”), have been fully executed by Agency, Terra Serena, KB South Bay, the City of Milpitas (“City”) and the County of Santa Clara (“County”), and (iii) this Amendment and the MOU Amendment have been approved by all requisite action of Agency, City and County. Upon execution of three (3) copies of this Amendment and five (5) copies of the MOU Amendment by Terra Serena and KB South Bay, Terra Serena shall deliver such executed copies to the Agency for processing and signature by the Agency, City and County, as appropriate, so that each party signing an amendment will receive a fully executed original of such amendment. Notwithstanding the foregoing, this Amendment shall become null and void if the County and City do not approve and execute the MOU Amendment on or before March 31, 2009. As used in the Original Agreement, “Effective Date” means the date the governing body of the Agency approved the Original DDA and the Original DDA was executed by the last of Developer or Agency. From and after the Amendment Effective Date, except as used in Part 10 of the Original DDA or as otherwise provided in this Amendment, the terms “Agreement” or “DDA” as used in the Original DDA or this Amendment shall mean the Original DDA as amended by this Amendment. As used in this Amendment, “Low Income” means a household that does not exceed eighty percent (80%) of the

Santa Clara County median income, as determined, updated and published annually by the California Department of Housing and Community Development, adjusted for household size appropriate for the unit, who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to Division 31 of the Health and Safety Code, as defined in California Health and Safety Code Section 50093. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original DDA.

2. In Lieu Payments. Terra Serena agrees to pay an in lieu affordable housing fee of Thirty Seven Thousand Dollars (\$37,000) (the "In Lieu Payments") for each of the forty six (46) Unsold Parcel "C" Affordable Units identified on Exhibit A attached hereto as an "In Lieu Unit" (the "In Lieu Units"), in consideration for the release of the In Lieu Units from the lien and encumbrance of the Parcel "C" Regulatory Agreement. The legal descriptions for the In Lieu Units are attached hereto as Exhibit "B". The forty six (46) In Lieu Payments in the aggregate total One Million Seven Hundred Two Thousand Dollars (\$1,702,000). One half of the In Lieu Payments (Eight Hundred Fifty One Thousand Dollars (\$851,000)) shall be paid to the Agency and the other half (Eight Hundred Fifty One Thousand Dollars (\$851,000)) to the County at the Amendment Closing (defined in Section 4(a) below). Payment of the In Lieu Payments to the Agency and County as described in this paragraph above shall be in full satisfaction of the obligation of Terra Serena, KB South Bay and their successors and assigns to develop, market and sell the In Lieu Units to Moderate Income purchasers or as affordable units pursuant to the Original DDA, as modified by this Amendment, or the Original MOU as described in and as modified by the MOU Amendment, or the Parcel "C" Regulatory Agreement (as amended from time to time), and is being accepted by the Agency and County in lieu of such obligation. The In Lieu Payments described in this Amendment are the same In Lieu Payments described in the MOU Amendment, and are not in addition thereto. From and after the Amendment Effective Date, Terra Serena, KB South Bay and their successors and assigns shall not be required to market and sell any of the In Lieu Units to Moderate Income purchasers or as affordable units pursuant to the DDA, the MOU, or the Parcel "C" Regulatory Agreement (as amended from time to time), but each In Lieu Unit shall continue to be encumbered by the Parcel "C" Regulatory Agreement until the Parcel "C" Regulatory Amendment (defined below) is recorded in the Official Records in accordance with this Amendment.

3. Remaining Parcel "C" Affordable Units. Upon payment of the In Lieu Payments to the Agency and County pursuant Section 2 above, the total number of Parcel "C" Affordable Units shall be reduced from eighty five (85) to thirty nine (39), with eighteen (18) of them having already been sold and deeded to a qualified Moderate Income buyer as of the Reference Date. The remaining twenty one (21) Parcel "C" Affordable Units that have not been sold and deeded to a qualified Moderate Income buyer as of the Reference Date are referred to in this Amendment as the "Remaining Parcel "C" Affordable Units". The Remaining Parcel "C" Affordable Units that are not under contract for sale to a qualified Moderate Income buyer as of the Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers (rather than to moderate income purchasers as is now provided in the Original DDA), but shall otherwise continue to be made available for sale as affordable units in accordance with the DDA. In consideration of the payment of the In Lieu Payments to the Agency and the County as described in Section 2 of this Amendment, the Agency shall release all of the In Lieu Units from the Parcel "C" Regulatory Agreement and revise the Parcel "C"

Regulatory Agreement to conform to the terms and conditions of this Amendment. The release of the In Lieu Units and amendment of the Parcel "C" Regulatory Agreement shall be done pursuant to a Release and Amendment of Agreement Affecting Real Property in the form attached hereto as Exhibit C (the "Parcel "C" Regulatory Amendment"), which shall be recorded in the Official Records on the Amendment Closing Date (defined in Section 4(a)). The following shall also apply with respect to the Remaining Parcel "C" Affordable Units, notwithstanding Section 605(c)(1) or any other provision of the Original DDA, the Parcel "C" Deed or the Parcel "C" Regulatory Agreement to the contrary:

(i) The Remaining Parcel "C" Affordable Units are identified as a "Remaining Parcel "C" Affordable Unit" on Exhibit A attached hereto. Following the Amendment Effective Date, the Remaining Parcel "C" Affordable Units which are not under contract for sale to a qualified Moderate Income purchaser as of the Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers at the following sales prices (the "New Sales Prices"): Two Hundred Twenty Six Thousand Five Hundred Dollars (\$226,500) for a one-bedroom unit and Two Hundred Forty Six Thousand Five Hundred Dollars (\$246,500) for a two bedroom unit. However, if Terra Serena is unable to entice a qualified Low Income purchaser to purchase a Remaining Parcel "C" Affordable Unit at the applicable New Sales Price required above, Terra Serena shall have the option, but not the obligation, to lower the applicable sales price. For any Remaining Parcel "C" Affordable Unit under contract to a qualified Moderate Income purchaser as of the Amendment Effective Date, Terra Serena shall not be obligated to reduce the sales price to conform to the New Sales Price or to cancel such contract so that the unit is available for sale to a qualified Low Income purchaser; provided, however, that if any such sales contract terminates without the unit having been deeded to the qualified Moderate Income purchaser pursuant to such sales contract, then upon thereafter entering into any new sales contract for such unit, the purchase price for such unit shall be not more than the applicable New Sales Price described above and the new purchaser shall be a qualified Low Income purchaser. Agency shall continue to provide the Parcel "C" Agency Loans for all of the Remaining Parcel "C" Affordable Units, whether sold to a Moderate Income purchaser under a contract in place as of the Amendment Effective Date or to a Low Income purchaser pursuant to this Amendment, but shall not be obligated to increase the amount of the Parcel "C" Agency Loan for any one unit beyond Fifty Thousand Dollars (\$50,000) in order to entice a qualified Low Income purchaser to buy a unit. Likewise, Developer shall have no obligation to lower the applicable sale price for any unit or fund any portion of the sums needed for a Low Income purchaser to acquire a Remaining Parcel "C" Affordable Unit or qualify for a purchase. The last two (2) sentences of Section 605(c)(7) of the Original DDA, relating to Developer's obligation to share in a portion of the Agency's assistance, are hereby deleted in their entirety.

4. Abbott Connection. All references to the Abbott Connection work in the Original DDA are hereby deleted. The Abbott Connection work shall no longer be part of the Approved Infrastructure or Approved Mitigations under the DDA and shall no longer be a requirement under the DDA. Removal of the Abbott Connection work as a requirement under the DDA shall not affect any reimbursements made or required to be made by the Agency or County for any other Approved Infrastructure or Approved Mitigations.

5. Deposits into Escrow; Closing.

(a) Closing. Payment of the In Lieu Payments and recordation of the Parcel “C” Regulatory Amendment shall take place on the date that is five (5) business days after the Amendment Effective Date (the “Amendment Closing Date”), through the Escrow, as evidenced by recordation of the Parcel “C” Regulatory Amendment in the Official Records (the “Amendment Closing”). Upon the Amendment Closing, one-half of the In Lieu Payments shall be paid from Escrow to the Agency and one-half of the In Lieu Payments shall be paid from Escrow to the County. All escrow, recording and other closing costs with respect to the Amendment Closing (collectively, the “Closing Costs”) shall be paid by Terra Serena.

(b) Deposits by Terra Serena. Not later than two (2) business days after the Amendment Effective Date, Terra Serena shall deliver to Escrow Holder the following:

- (i) The In Lieu Payments and the Closing Costs;
- (ii) A counterpart original of the Parcel “C” Regulatory Amendment, duly executed by Terra Serena, with signatures notarized to the extent required for recording such document in the Official Records; and
- (iii) Such other documents reasonably necessary to consummate the Amendment Closing, to the extent consistent with this Amendment, including escrow instructions.

(c) Deposits by the Agency. Not later than two (2) business days after the Amendment Effective Date, Agency shall deliver to Escrow Holder the following:

- (i) A counterpart original of the Parcel “C” Regulatory Amendment, duly executed by the Agency, with signatures notarized to the extent required for recording of such document in the Official Records on the Amendment Closing Date; and
- (ii) Such other documents reasonably necessary to consummate the Amendment Closing, to the extent consistent with this Amendment, including escrow instructions.

6. Effect of Amendment. Except to the extent modified by this Amendment, the Original DDA shall remain unchanged and in full force and effect. In the event of any conflict between the Original DDA and this Amendment, this Amendment shall control. This Amendment may be executed in counterparts, and when the executed signature pages are combined, shall constitute one single instrument.

Signatures appear on the next page

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

By: _____
Thomas C. Williams, Executive Director

Attest:

By: _____
Mary Lavelle, Agency Secretary

Approved as to Form:

By: _____
Michael J. Ogaz
Redevelopment Agency General Counsel

LB-L/KB TERRA SERENA LLC,
a Delaware limited liability company

By: KB HOME SOUTH BAY INC., a California
corporation, its Operating Member

By: _____
Its: _____

KB HOME SOUTH BAY INC., a California
corporation

By: _____
Its: _____

List of Exhibits:

- Exhibit A: List identifying Unsold Parcel "C" Affordable Units and In Lieu Units
- Exhibit B: Legal Descriptions of In Lieu Units
- Exhibit C: Form of Parcel "C" Regulatory Amendment

EXHIBIT "A"
 Amendment to Disposition and Development Agreement

(67 Unsold Parcel "C" Affordable Units, Consisting of 46 In Lieu Units and
 21 Remaining Parcel "C" Affordable Units)

In Lieu Units to be released:

Lot 1 – Building 1	
Phases 4 - 6	
Phase 4	224
	226
	321
	323
	325
	327
Phase 5	212
	220
	313
	319
Phase 6	206
	304
	305
	307
	309
	311

Lot 2 – Building 2	
Phases 1 - 3	
Phase 1	222
Phase 3	102
	310
	311
	308

Lot 3 – Building 3	
Phases 7 - 9	
Phase 7	101
	201
	222
	224
	226
	321
	323
	325
	327
Phase 8	212
	220
	312
	313
Phase 9	319
	102
	202
	204
	206
	304
	305
	306
	307
	309
311	
408	

Total 16

Total 5

Total 25

Total
46

EXHIBIT "A"

Remaining Parcel "C" Affordable Units:

Building 1		
Phases 4 - 6 Bedrooms		
Phase 4	222	2
Phase 6	102	2
	201	2
	204	2
	208	1
	210	1
	306	2
	308	1
310	1	
Total		<u>9</u>

(4) 1-Bedroom Units
(5) 2-Bedroom Units

Building 2		
Phases 1 - 3 Bedrooms		
Phase 2	312	2
	319	2
Phase 3	210	1
	208	1
	206	2
	306	2
	307	2
	304	2
Total		<u>8</u>

(2) 1-Bedroom Units
(6) 2-Bedroom Units

Building 3		
Phases 7 - 9 Bedrooms		
Phase 9	208	1
	210	1
	308	1
	310	1
Total		<u>4</u>

(4) 1-Bedroom Units

Total 21

EXHIBIT "B"
Amendment to Disposition and Development Agreement

Legal Descriptions of In Lieu Units

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

PARCEL ONE-A:

Unit 222, as shown on Condominium Plan recorded February 27, 2007, as Document No. 19318871, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Unit is located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL ONE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

PARCEL TWO-A:

Unit 102, 308, 310 and 311, inclusive, as shown on Condominium Plan recorded June 26, 2007, as Document No. 19483292, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL TWO-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

PARCEL THREE-A:

Unit 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded July 18, 2007, as Document No. 19516494, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL THREE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

PARCEL FOUR-A:

Unit 212, 220, 313 and 319, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568693, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FOUR-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

PARCEL FIVE-A:

Unit 206, 304, 305, 307, 309 and 311, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568694, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007,

as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FIVE-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

PARCEL SIX-A:

Units 101, 201, 222, 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570234, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SIX-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

PARCEL SEVEN-A:

Units 212, 220, 312, 313 and 319, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570235, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SEVEN-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

PARCEL EIGHT-A:

Units 102, 202, 204, 206, 304, 305, 306, 307, 309, 311 and 408, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570236, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL EIGHT-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

EXHIBIT "C"
Amendment to Disposition
And Development Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

LB/L-KB TERRA SERENA LLC
c/o KB Home South Bay Inc.
6700 Koll Center Parkway
Pleasanton, California 94566
Attention: Jed Bennett

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELEASE AND AMENDMENT
OF AGREEMENT AFFECTING REAL PROPERTY

THIS RELEASE AND AMENDMENT OF AGREEMENT AFFECTING REAL PROPERTY (this "Amendment") is made as of _____, 2009 by and between THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ("Redevelopment Agency") and LB/L-KB TERRA SERENA LLC, a Delaware limited liability company ("Developer"), with reference to the following facts:

RECITALS

A. Redevelopment Agency and Developer are parties to that certain Agreement Affecting Real Property dated as of November 10, 2005 and recorded on November 10, 2005 as Instrument No. 18674192 in the Official Records of Santa Clara County, California ("Original Agreement"). The Original Agreement imposes certain covenants and restrictions against the real property and improvements thereon described in the Original Agreement as the Site.

B. Developer acquired Parcel "C" (being a portion of the Site) pursuant to that certain Grant Deed recorded in the Official Records of Santa Clara County, California on November 10, 2005 as Instrument 18674191 (the "Parcel C Deed"). Developer has developed Parcel "C" as a residential housing development in accordance with that certain Disposition and Development Agreement by and between Redevelopment Agency and Developer's predecessor in interest, KB Home South Bay Inc. ("KB South Bay"), dated as of January 18, 2005 (the "Original DDA"). The Original DDA has been amended pursuant to that certain Amendment to Disposition and Development Agreement dated for reference purposes as of December 21, 2008 (the "DDA Amendment"). The DDA Amendment became effective on _____, 2009 (the "DDA Amendment Effective Date"). From and after the date of this Amendment, as used in this Amendment and the Original Agreement, "DDA" shall mean the Original DDA, as amended by the DDA Amendment.

C. In accordance with the DDA Amendment, Redevelopment Agency and Developer desire to amend the Original Agreement and remove the covenants and restrictions set forth therein from certain portions of the Site.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE REDEVELOPMENT AGENCY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1. Released Units. Redevelopment Agency and Developer hereby terminate the Original Agreement, and all covenants and restrictions set forth in the Original Agreement, with respect to those portions of the Site more particularly described on Exhibit A attached hereto (the "Released Units"). In accordance with the DDA Amendment, Developer has paid in lieu affordable housing fees for the Released Units of Thirty Seven Thousand Dollars (\$37,000) for each of the forty six (46) Released Units identified on Exhibit A (the "In Lieu Payments"), with one half of the In Lieu Payments (Eight Hundred Fifty One Thousand Dollars (\$851,000)) being paid to the Redevelopment Agency and the other half (Eight Hundred Fifty One Thousand Dollars (\$851,000)) being paid to the County of Santa Clara ("County"). Payment of the In Lieu Payments to the Redevelopment Agency and the County pursuant to the DDA Amendment was in full satisfaction of the obligation of Developer, KB South Bay and their successors and assigns to develop, market and sell the Released Units to Moderate Income purchasers or as affordable units pursuant to the DDA, the Memorandum of Understanding described in the DDA, and the Original Agreement (as amended from time to time) and has been accepted by the Redevelopment Agency and County in lieu of such obligation.

2. Amendment of Original Agreement as to Remaining Lots. With respect to those portions of the Site which are not released from the Original Agreement pursuant to Section 1 of this Amendment (such unreleased portions being the "Remaining Lots"), the Original Agreement shall be amended as provided below, notwithstanding Section 605(c)(1) or any other provision of the Original DDA, the Parcel C Deed, the Original Agreement or the Memorandum of Understanding to the contrary. In accordance with the DDA Amendment, the total number of Parcel C Affordable Units or Affordable Parcel C Units (each as defined in the Original Agreement) is reduced from a total of eighty five (85) to a total of thirty nine (39), with some of such thirty nine (39) units having already been sold and deeded to qualified purchasers, and the balance of such thirty nine (39) units remaining to be sold and deeded to qualified purchasers (such balance remaining to be sold and deeded being the "Remaining Parcel C Affordable Units"). The Remaining Parcel C Affordable Units that were not under contract for sale to a qualified Moderate Income buyer as of the DDA Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers (rather than to Moderate Income purchasers), but shall otherwise continue to be made available for sale as affordable units in accordance with the DDA and Agreement. The references in the Original Agreement to direct subsidies are hereby deleted, the parties having agreed that the assistance to be provided by the Redevelopment Agency to Moderate Income and Low Income households shall be by way of the silent-second mortgages described in the Original Agreement and the DDA. The following shall also apply with respect to the Remaining Parcel C Affordable Units:

(a) From and after the DDA Amendment Effective Date, the Remaining Parcel C Affordable Units that were not under contract for sale to a qualified Moderate Income purchaser as of the DDA Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers at the following sales prices (the "New Sales Prices"): Two

Hundred Twenty Six Thousand Five Hundred Dollars (\$226,500) for a one-bedroom unit and Two Hundred Forty Six Thousand Five Hundred Dollars (\$246,500) for a two bedroom unit. However, if Developer is unable to entice a qualified Low Income purchaser to purchase a Remaining Parcel C Affordable Unit at the applicable sale price required above, Developer shall have the option, but not the obligation, to lower the applicable sale price. For any Remaining Parcel C Affordable Unit that was under contract to a qualified Moderate Income purchaser as of the DDA Amendment Effective Date, Developer shall not be obligated to reduce the sales price to conform to the New Sales Price or to cancel such contract so that the unit is available for sale to a qualified Low Income purchaser; provided, however, that if any such sales contract terminates without the unit having been deeded to the qualified Moderate Income purchaser pursuant to such sales contract, then upon thereafter entering into any new sales contract for such unit, the purchase price for such unit shall be not more than the applicable New Sales Price described above and the new purchaser shall be a qualified Low Income purchaser. The Redevelopment Agency shall continue to provide the Parcel "C" Agency Loans described in the DDA (being the silent second mortgages described in the Original Agreement) for all of the Remaining Parcel C Affordable Units, whether sold to a Moderate Income pursuant to a contract in place with such purchaser as of the DDA Amendment Effective Date or to a Low Income purchaser pursuant to this Amendment, but shall not be obligated to increase the amount of the Parcel "C" Agency Loan for any one unit beyond Fifty Thousand Dollars (\$50,000). Likewise, Developer shall have no obligation to lower the applicable sale price for any unit or fund any portion of the sums needed for a Low Income purchaser to acquire a Remaining Parcel C Affordable Unit or qualify for a purchase. The last two (2) sentences of Section 605(c)(7) of the Original DDA, relating to Developer's obligation to share in a portion of the Redevelopment Agency's assistance, have been deleted in their entirety.

3. Defined Terms; Effect of Amendment; Counterparts. As used in this Amendment, "Low Income" means a household that does not exceed eighty percent (80%) of the Santa Clara County median income, as determined, updated and published annually by the California Department of Housing and Community Development, adjusted for household size appropriate for the unit, who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to Division 31 of the Health and Safety Code, as defined in California Health and Safety Code Section 50093. From and after the date hereof, the term "Agreement" as used in the Original Agreement or this Amendment shall mean the Original Agreement, as amended by this Amendment. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original Agreement. Except to the extent modified by this Amendment, the Original Agreement shall remain unchanged and in full force and effect. In the event of a conflict between this Amendment on the one hand, and the Original DDA, Parcel C Deed or Original Agreement on the other hand, this Amendment shall control with respect to such conflict. This Amendment may be executed in counterparts, and when the executed signature pages are combined, shall constitute one single instrument. To the extent any portion of the Site was released from the Original Agreement prior to the date hereof, this Amendment shall not operate to subject any such released portions of the Site to the lien or encumbrance of the Original Agreement, as modified by this Amendment.

[Signature appear starting on the next page]

IN WITNESS WHEREOF, the Redevelopment Agency and Developer have executed this Amendment as of the date first set forth above.

REDEVELOPMENT AGENCY OF THE CITY OF
MILPITAS

By: _____
Thomas C. Williams, Executive Director

ATTEST:

Mary Lavelle, Agency Secretary

APPROVED AS TO FORM AND LEGALITY:

By: _____
Michael J. Ogaz
Redevelopment Agency General Counsel

LB-L/KB TERRA SERENA LLC,
a Delaware limited liability company

By: KB HOME SOUTH BAY INC., a
California corporation, its Operating Member

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF RELEASED UNITS

(List and Legal Descriptions of Released Units)

List of Released Units:

	Lot 1 - Building 1 Phases 4 - 6
Phase 4	224
	226
	321
	323
	325
	327
Phase 5	212
	220
	313
	319
Phase 6	206
	304
	305
	307
	309
	311

	Lot 2 - Building 2 Phases 1 - 3
Phase 1	222
Phase 3	102
	310
	311
	308

	Lot 3 - Building 3 Phases 7 - 9
Phase 7	101
	201
	222
	224
	226
	321
	323
	325
Phase 8	327
	212
	220
	312
	313
Phase 9	319
	102
	202
	204
	206
	304
	305
	306
	307
	309
311	
408	

Total 16

Total 5

Total 25

Total
46

EXHIBIT "A"
List and Legal Descriptions of Released Units

Legal Descriptions of Released Units

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

PARCEL ONE-A:

Unit 222, as shown on Condominium Plan recorded February 27, 2007, as Document No. 19318871, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Unit is located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL ONE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

PARCEL TWO-A:

Unit 102, 308, 310 and 311, inclusive, as shown on Condominium Plan recorded June 26, 2007, as Document No. 19483292, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL TWO-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

PARCEL THREE-A:

Unit 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded July 18, 2007, as Document No. 19516494, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL THREE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

PARCEL FOUR-A:

Unit 212, 220, 313 and 319, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568693, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FOUR-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

EXHIBIT "A"

Page 3 of 5

EXHIBIT "C"

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PARCEL FIVE-A:

Unit 206, 304, 305, 307, 309 and 311, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568694, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FIVE-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

PARCEL SIX-A:

Units 101, 201, 222, 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570234, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SIX-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

PARCEL SEVEN-A:

Units 212, 220, 312, 313 and 319, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570235, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document

EXHIBIT "A"

Page 4 of 5

EXHIBIT "C"

Page 8 of 11

No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SEVEN-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

PARCEL EIGHT-A:

Units 102, 202, 204, 206, 304, 305, 306, 307, 309, 311 and 408, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570236, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL EIGHT-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____,
Notary Public, personally appeared _____, who 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(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
(Signature)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____,
Notary Public, personally appeared _____, who 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(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
(Signature)

AMENDMENT TO MEMORANDUM OF UNDERSTANDING

This Amendment to Memorandum of Understanding (“Amendment”), dated for reference purposes only as of December 21, 2008 (the “Reference Date”), is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic (“Agency”), KB HOME SOUTH BAY INC., a California corporation (“KB South Bay”), LB/L-KB TERRA SERENA LLC, a Delaware limited liability company (“Terra Serena”), CITY OF MILPITAS, a public body, corporate and politic (“City”), and THE COUNTY OF SANTA CLARA, a political subdivision of the State of California (“County”).

RECITALS

A. Agency, KB South Bay, City and County entered into that certain Memorandum of Understanding dated as of May 18, 2004 (the “Original MOU”) relating to affordable housing on the Elmwood Property, being that certain real property located in Milpitas, California, and described in the Original MOU as Parcel C and Parcel D.

B. As contemplated by the Original MOU, Agency and KB South Bay entered into that certain Disposition and Development Agreement dated as of January 18, 2005 (the “Original DDA”) with respect to Parcel C and Parcel D.

C. KB South Bay assigned its interest in and to the Original DDA, but only as it relates to Parcel C, to Terra Serena. Pursuant to the Original DDA, Agency conveyed Parcel C to Terra Serena by Grant Deed recorded in the Official Records of Santa Clara County, California (“Official Records”) on November 10, 2005 as Instrument 18674191. In connection with the conveyance of Parcel C to Terra Serena, Agency and Terra Serena entered into that certain Agreement Affecting Real Property dated as of November 10, 2005 and recorded in the Official Records on November 10, 2005 as Instrument 18674192 (the “Parcel C Regulatory Agreement”).

D. Pursuant to the Original MOU and Original DDA, eighty five (85) of the residential units on Parcel C are required to be set aside as affordable homes for sale to persons of moderate income (the “Parcel C Affordable Homes”). In addition, the Original MOU and Original DDA established minimum and maximum sales prices for the Parcel C Affordable Homes. As the result of current real estate market conditions and resulting lack of sufficient qualified Moderate Income purchasers as of the Reference Date, only eighteen (18) of the Parcel C Affordable Homes have been sold and deeded to qualified Moderate Income purchasers as of the Reference Date. The sixty seven (67) Parcel C Affordable Homes that have not been sold and deeded to qualified Moderate Income purchasers as of the Reference Date are identified on Exhibit A attached hereto (the “Unsold Parcel C Affordable Homes”).

E. Agency and City desire to increase the level of affordability in the development on Parcel C in order to fulfill the regional housing goals of the City of Milpitas. In addition, the Agency and City wish to better leverage Agency funds to enable the Agency to assist a higher percentage of low and moderate income households within the Agency’s jurisdiction. To that end, Agency, Terra Serena and KB South Bay have negotiated an amendment to the Original DDA, on the terms and conditions set forth in an Amendment to

Disposition and Development Agreement, a copy of which is attached hereto as Exhibit B (the "DDA Amendment").

F. The Agency and City have determined that amending the Original MOU, the Original DDA and the Parcel C Regulatory Agreement on the terms and conditions set forth in this Amendment and the DDA Amendment will assist the Agency in accomplishing the goals described in Recital E above, will effectuate the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, are in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and are in accord with the public purposes and provisions of all applicable federal, state, and local laws and requirements, including without limitation State Redevelopment laws.

G. County has determined that amending the Original MOU pursuant to this Amendment, and the amendment to the Original DDA and the Parcel C Regulatory Agreement as described in the DDA Amendment, is in the vital and best interests of the County of Santa Clara and the health, safety, morals and welfare of its residents, and are in accord with the public purposes and provisions of all applicable federal, state, and local laws and requirements, including without limitation State Redevelopment laws.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, Agency, KB South Bay, Terra Serena, City and County agree as follows:

1. Effective Date; Defined Terms. This Amendment shall become effective on the date that all of the following have occurred: (i) five (5) copies of this Amendment have been signed by Agency, Terra Serena, KB South Bay, City and County, (ii) three (3) copies of the DDA Amendment have been signed by Agency, Terra Serena and KB South Bay, and (iii) this Amendment and the DDA Amendment have been approved by all requisite action of Agency, City and County. Upon execution of five (5) copies of this Amendment and three (3) copies of the DDA Amendment by Terra Serena and KB South Bay, Terra Serena shall deliver such executed copies to the Agency for processing and signature by the Agency, City and County, as appropriate, so that each party signing an amendment will receive a fully executed original of such amendment. Notwithstanding the foregoing, if this Amendment has not become effective on or before March 31, 2009, all signatures obtained as of such time shall be deemed withdrawn and of no force or effect, and this Amendment shall not thereafter become effective unless otherwise agreed in a separate writing signed by all of the parties named in this Amendment. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original MOU.

2. In Lieu Payments. As described in the DDA Amendment, Terra Serena agrees to pay an in lieu affordable housing fee of Thirty Seven Thousand Dollars (\$37,000) (the "In Lieu Payments") for each of the forty six (46) Unsold Parcel C Affordable Homes identified on Exhibit A attached hereto as an "In Lieu Unit" (the "In Lieu Units"), in consideration for the release of the In Lieu Units from the lien and encumbrance of the Parcel C Regulatory Agreement. The forty six (46) In Lieu Payments in the aggregate total One Million Seven Hundred Two Thousand Dollars (\$1,702,000). One half of the In Lieu Payments (Eight Hundred Fifty One Thousand Dollars (\$851,000)) shall be paid to the Agency and the other half (Eight Hundred Fifty One Thousand Dollars (\$851,000)) to the County upon recordation of the Parcel

“C” Regulatory Amendment described in the DDA Amendment in the Official Records (the “DDA Amendment Closing”). Payment of the In Lieu Payments to the Agency and County as described in this paragraph above shall be in full satisfaction of the obligation of Terra Serena, KB South Bay and their successors and assigns to develop, market and sell the In Lieu Units to Moderate Income purchasers or as affordable homes pursuant to the Original MOU, Original DDA or Parcel C Regulatory Agreement, as those documents are modified as contemplated by this Amendment and the DDA Amendment, and is being accepted by the Agency and County in lieu of such obligation. The In Lieu Payments described in this Amendment are the same In Lieu Payments described in the DDA Amendment, and are not in addition thereto. From and after the date this Amendment becomes effective, Terra Serena, KB South Bay and their successors and assigns shall not be required to market and sell any of the In Lieu Units to Moderate Income purchasers or as affordable units pursuant to the Original MOU, Original DDA or Parcel C Regulatory agreement, as those documents are modified as contemplated by this Amendment and the DDA Amendment, but each In Lieu Unit shall continue to be encumbered by the Parcel C Regulatory Agreement until the Release and Amendment of Agreement Affecting Real Property described in the DDA Amendment has been recorded in the Official Records in accordance with the DDA Amendment.

3. Remaining Parcel C Affordable Homes. Upon payment of the In Lieu Payments to the Agency and County as described in Section 2 above, the total number of residential units required to be sold as Affordable Homes pursuant to the Original MOU shall be reduced from eighty five (85) to thirty nine (39), with eighteen (18) of them having already been sold and deeded to a qualified Moderate Income buyer as of the Reference Date. The remaining twenty one (21) Affordable Homes that have not been sold and deeded to a qualified Moderate Income buyer as of the Reference Date are referred to in this Amendment as the “Remaining Parcel C Affordable Homes”. The Remaining Parcel C Affordable Homes that are not under contract for sale to a qualified Moderate Income purchaser as of the effective date of this Amendment shall be made available for sale exclusively to qualified low income purchasers (rather than to Moderate Income purchasers as is now provided in the Original MOU). Notwithstanding Section 1(a) of the Original MOU, the Remaining Parcel C Affordable Homes that are not under contract for sale to a qualified Moderate Income purchaser as of the effective date of this Amendment shall be made available for sale exclusively to qualified low income purchasers at the following sales prices (the “New Sales Prices”): Two Hundred Twenty Six Thousand Five Hundred Dollars (\$226,500) for a one-bedroom unit and Two Hundred Forty Six Thousand Five Hundred Dollars (\$246,500) for a two bedroom unit. However, if Terra Serena is unable to entice a qualified low income purchaser to purchase a Remaining Parcel C Affordable Home at the New Sales Prices, Terra Serena shall have the option, but not the obligation, to lower the applicable sales prices. For any Remaining Parcel C Affordable Home under contract to a qualified Moderate Income purchaser as of the effective date of this Amendment, Terra Serena shall not be obligated to reduce the sales price to conform to the New Sales Price or to cancel such contract with the Moderate Income purchaser so that it is available for sale to a qualified low income purchaser; provided, however, that if any such sales contract terminates without the Affordable Home having been deeded to the qualified Moderate Income purchaser pursuant to such sales contract, then upon thereafter entering into any new sales contract for such unit, the purchase price for such unit shall be not more than the applicable New Sales Price described above and the new purchaser shall be a qualified low income purchaser. Agency shall be required to provide a silent-second mortgage in the amount of Fifty Thousand Dollars (\$50,000)

for each of the Remaining Parcel C Affordable Homes whether sold to a Moderate Income purchaser under a contract in place as of the effective date of this Amendment or to a low income purchaser pursuant to this Amendment. Such silent-second mortgages shall otherwise be made in accordance with Section 1(b) of the Original MOU, except that (i) Agency shall not be obligated to increase the amount of the loan for any one Remaining Parcel C Affordable Home beyond Fifty Thousand Dollars (\$50,000) in order to entice a qualified low income purchaser to buy such home, (ii) Participant shall have no obligation to lower the applicable sale price for any unit or fund any portion of the sums needed for a low income purchaser to acquire a Remaining Parcel C Affordable Home or qualify for a purchase, and (iii) the last two (2) sentences of Section 1(b) of the Original MOU, relating to an increase in the Agency loan and Agency and Participant sharing in such increase, are hereby deleted in their entirety. As used in this Amendment, "low income" means a household that does not exceed eighty percent (80%) of the Santa Clara County median income, as determined, updated and published annually by the California Department of Housing and Community Development, adjusted for household size appropriate for the Affordable Home, who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to Division 31 of the Health and Safety Code, as defined in California Health and Safety Code Section 50093.

4. DDA Amendment. City and County hereby approve the DDA Amendment and the transactions described therein. County agrees that removal of the Abbott Connection work (described in the Original DDA) as a requirement under the DDA shall not affect any reimbursements made or required to be made by the County for any other Approved Infrastructure or Approved Mitigations described in the DDA.

5. Effect of Amendment. Except to the extent modified by this Amendment, the Original MOU shall remain unchanged and in full force and effect. In the event of any conflict between the Original MOU and this Amendment, this Amendment shall control. This Amendment may be executed in counterparts, and when the executed signature pages are combined, shall constitute one single instrument.

Signatures appear on the next page

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

By: _____
Thomas C. Williams, Executive Director

Attest:

By: _____
Mary Lavelle, Agency Secretary

Approved as to Form:

By: _____
Michael J. Ogaz
Redevelopment Agency General Counsel

CITY:
City of Milpitas

By: _____
Thomas C. Williams, City Manager

Attest:

By: _____
Mary Lavelle, City Clerk

Approved as to Form:

By: _____
Mike Ogaz
City Attorney

LB-L/KB TERRA SERENA LLC,
a Delaware limited liability company

By: KB HOME SOUTH BAY INC., a California
corporation, its Operating Member

By: _____
Its: _____

KB HOME SOUTH BAY INC., a California
corporation

By: _____
Its: _____

COUNTY:

The County of Santa Clara, a political
subdivision of the State of California

By: _____
Chairperson
Board of Supervisors

Attest: _____
Phyllis A. Perez, Clerk
Board of Supervisors

List of Exhibits:

- Exhibit A: List identifying Unsold Parcel C Affordable Homes and In Lieu Units
- Exhibit B: Form of DDA Amendment

EXHIBIT "A"

Amendment to Memorandum of Understanding

(67 Unsold Parcel C Affordable Homes, Consisting of 46 In Lieu Units and
21 Remaining Parcel C Affordable Homes)

In Lieu Units to be released:

Lot 1 - Building 1	
Phases 4 - 6	
Phase 4	224
	226
	321
	323
	325
	327
Phase 5	212
	220
	313
	319
Phase 6	206
	304
	305
	307
	309
	311

Lot 2 - Building 2	
Phases 1 - 3	
Phase 1	222
Phase 3	102
	310
	311
	308

Lot 3 - Building 3	
Phases 7 - 9	
Phase 7	101
	201
	222
	224
	226
	321
	323
Phase 8	325
	327
	212
	220
	312
Phase 9	313
	319
	102
	202
	204
	206
	304
	305
	306
	307
309	
311	
408	

Total 16

Total 5

Total 25

Total
46

EXHIBIT "A"

Remaining Parcel C Affordable Homes:

Building 1		
Phases 4 - 6 Bedrooms		
Phase 4	222	2
Phase 6	102	2
	201	2
	204	2
	208	1
	210	1
	306	2
	308	1
	310	1

(4) 1-Bedroom Units
(5) 2-Bedroom Units

Total 9

Building 2		
Phases 1 - 3 Bedrooms		
Phase 2	312	2
	319	2
Phase 3	210	1
	208	1
	206	2
	306	2
	307	2
	304	2

(2) 1-Bedroom Units
(6) 2-Bedroom Units

Total 8

Building 3		
Phases 7 - 9 Bedrooms		
Phase 9	208	1
	210	1
	308	1
	310	1

(4) 1-Bedroom Units

Total 4

Total 21

EXHIBIT “B”
Amendment to Memorandum
of Understanding

AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

This Amendment to Disposition and Development Agreement (“Amendment”), dated for reference purposes only as of December 21, 2008 (the “Reference Date”), is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS (“Agency”), KB HOME SOUTH BAY INC., a California corporation (“KB South Bay”) and LB/L-KB TERRA SERENA LLC, a Delaware limited liability company (“Terra Serena”).

RECITALS

A. Agency and KB South Bay entered into that certain Disposition and Development Agreement dated as of January 18, 2005 (the “Original DDA”) with respect to certain real property located in Milpitas, California, and described in the Original DDA as Parcel “C” and Parcel “D”. Parcel “C” and Parcel “D” are more particularly described in the Original DDA and the Regulatory Agreements described below.

B. Pursuant to the Original DDA, Agency conveyed Parcel “D” to KB South Bay by Grant Deed recorded in the Official Records of Santa Clara County, California (“Official Records”) on April 7, 2005 as Instrument 18307394. In connection with the conveyance of Parcel “D” to KB South Bay, Agency and KB South Bay entered into that certain Agreement Affecting Real Property dated as of March 15, 2005 and recorded in the Official Records on April 4, 2005 as Instrument 18307395 (the “Parcel “D” Regulatory Agreement”).

C. In accordance with the Original DDA, KB South Bay assigned its interest in and to the Original DDA, but only as it relates to Parcel “C”, to Terra Serena. Pursuant to the Original DDA, Agency conveyed Parcel “C” to Terra Serena by Grant Deed recorded in the Official Records on November 10, 2005 as Instrument 18674191 (the “Parcel “C” Deed”). In connection with the conveyance of Parcel “C” to Terra Serena, Agency and Terra Serena entered into that certain Agreement Affecting Real Property dated as of November 10, 2005 and recorded in the Official Records on November 10, 2005 as Instrument 18674192 (the “Parcel “C” Regulatory Agreement”, together with the Parcel “D” Regulatory Agreement being, collectively, the “Regulatory Agreements”).

D. Pursuant to the Original DDA, eighty five (85) of the residential units to be constructed on Parcel “C” were designated for sale to qualified Moderate Income purchasers (the “Parcel “C” Affordable Units). In addition, the Original DDA provided that in the event the Parcel “C” Affordable Units could not be sold at a sales price equal to or more than the Minimum Sales Prices, the Agency and Terra Serena were to share in the cost of the Agency-provided silent-second mortgages by an amount necessary to entice a qualified buyer to purchase the unit.

E. As the result of current real estate market conditions and resulting lack of sufficient qualified Moderate Income purchasers as of the Reference Date, only eighteen (18) of the Parcel “C” Affordable Units have been sold and deeded to qualified Moderate Income purchasers as of the Reference Date. The sixty seven (67) Parcel “C” Affordable Units which have not been sold and deeded to qualified Moderate Income purchasers

as of the Reference Date are identified on Exhibit A attached hereto (the “Unsold Parcel “C” Affordable Units”).

F. Agency desires to increase the level of affordability in the development on Parcel “C” in order to fulfill the regional housing goals of the City of Milpitas. In addition, the Agency wishes to better leverage its funds to assist a higher percentage of low and moderate income households within the Agency’s jurisdiction.

G. The parties hereto also desire to remove the construction of the Abbott Connection work (described in the Original DDA) from the list of Approved Infrastructure Work and Approved Mitigations. By removal of the above referenced Approved Infrastructure Work and Approved Mitigations item, the Agency and Terra Serena wish to free up Agency funds to pay for other allowed reimbursements, costs and expenditures under the DDA.

H. The Agency has determined that amending the Original DDA and the Parcel “C” Regulatory Agreement on the terms and conditions set forth in this Amendment will assist the Agency in accomplishing the goals described in Recital F and G above, will effectuate the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, are in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and are in accord with the public purposes and provisions of all applicable federal, state, and local laws and requirements, including without limitation State Redevelopment laws.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, Agency, KB South Bay and Terra Serena agree as follows:

1. Effective Date; Defined Terms. As used in this Amendment, “Amendment Effective Date” means the date that all of the following have occurred (i) three (3) copies of this Amendment have been fully executed by Agency, Terra Serena and KB South Bay, (ii) five (5) copies of that certain Amendment to Memorandum of Understanding (“MOU Amendment”) which have been signed by KB South Bay and Terra Serena and delivered to Agency concurrently with the delivery of this Amendment (the “MOU Amendment”), have been fully executed by Agency, Terra Serena, KB South Bay, the City of Milpitas (“City”) and the County of Santa Clara (“County”), and (iii) this Amendment and the MOU Amendment have been approved by all requisite action of Agency, City and County. Upon execution of three (3) copies of this Amendment and five (5) copies of the MOU Amendment by Terra Serena and KB South Bay, Terra Serena shall deliver such executed copies to the Agency for processing and signature by the Agency, City and County, as appropriate, so that each party signing an amendment will receive a fully executed original of such amendment. Notwithstanding the foregoing, this Amendment shall become null and void if the County and City do not approve and execute the MOU Amendment on or before March 31, 2009. As used in the Original Agreement, “Effective Date” means the date the governing body of the Agency approved the Original DDA and the Original DDA was executed by the last of Developer or Agency. From and after the Amendment Effective Date, except as used in Part 10 of the Original DDA or as otherwise provided in this Amendment, the terms “Agreement” or “DDA” as used in the Original DDA or this Amendment shall mean the Original DDA as amended by this Amendment. As used in this Amendment, “Low Income” means a household that does not exceed eighty percent (80%) of the

Santa Clara County median income, as determined, updated and published annually by the California Department of Housing and Community Development, adjusted for household size appropriate for the unit, who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to Division 31 of the Health and Safety Code, as defined in California Health and Safety Code Section 50093. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original DDA.

2. In Lieu Payments. Terra Serena agrees to pay an in lieu affordable housing fee of Thirty Seven Thousand Dollars (\$37,000) (the “In Lieu Payments”) for each of the forty six (46) Unsold Parcel “C” Affordable Units identified on Exhibit A attached hereto as an “In Lieu Unit” (the “In Lieu Units”), in consideration for the release of the In Lieu Units from the lien and encumbrance of the Parcel “C” Regulatory Agreement. The legal descriptions for the In Lieu Units are attached hereto as Exhibit “B”. The forty six (46) In Lieu Payments in the aggregate total One Million Seven Hundred Two Thousand Dollars (\$1,702,000). One half of the In Lieu Payments (Eight Hundred Fifty One Thousand Dollars (\$851,000)) shall be paid to the Agency and the other half (Eight Hundred Fifty One Thousand Dollars (\$851,000)) to the County at the Amendment Closing (defined in Section 4(a) below). Payment of the In Lieu Payments to the Agency and County as described in this paragraph above shall be in full satisfaction of the obligation of Terra Serena, KB South Bay and their successors and assigns to develop, market and sell the In Lieu Units to Moderate Income purchasers or as affordable units pursuant to the Original DDA, as modified by this Amendment, or the Original MOU as described in and as modified by the MOU Amendment, or the Parcel “C” Regulatory Agreement (as amended from time to time), and is being accepted by the Agency and County in lieu of such obligation. The In Lieu Payments described in this Amendment are the same In Lieu Payments described in the MOU Amendment, and are not in addition thereto. From and after the Amendment Effective Date, Terra Serena, KB South Bay and their successors and assigns shall not be required to market and sell any of the In Lieu Units to Moderate Income purchasers or as affordable units pursuant to the DDA, the MOU, or the Parcel “C” Regulatory Agreement (as amended from time to time), but each In Lieu Unit shall continue to be encumbered by the Parcel “C” Regulatory Agreement until the Parcel “C” Regulatory Amendment (defined below) is recorded in the Official Records in accordance with this Amendment.

3. Remaining Parcel “C” Affordable Units. Upon payment of the In Lieu Payments to the Agency and County pursuant Section 2 above, the total number of Parcel “C” Affordable Units shall be reduced from eighty five (85) to thirty nine (39), with eighteen (18) of them having already been sold and deeded to a qualified Moderate Income buyer as of the Reference Date. The remaining twenty one (21) Parcel “C” Affordable Units that have not been sold and deeded to a qualified Moderate Income buyer as of the Reference Date are referred to in this Amendment as the “Remaining Parcel “C” Affordable Units”. The Remaining Parcel “C” Affordable Units that are not under contract for sale to a qualified Moderate Income buyer as of the Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers (rather than to moderate income purchasers as is now provided in the Original DDA), but shall otherwise continue to be made available for sale as affordable units in accordance with the DDA. In consideration of the payment of the In Lieu Payments to the Agency and the County as described in Section 2 of this Amendment, the Agency shall release all of the In Lieu Units from the Parcel “C” Regulatory Agreement and revise the Parcel “C”

Regulatory Agreement to conform to the terms and conditions of this Amendment. The release of the In Lieu Units and amendment of the Parcel "C" Regulatory Agreement shall be done pursuant to a Release and Amendment of Agreement Affecting Real Property in the form attached hereto as Exhibit C (the "Parcel "C" Regulatory Amendment"), which shall be recorded in the Official Records on the Amendment Closing Date (defined in Section 4(a)). The following shall also apply with respect to the Remaining Parcel "C" Affordable Units, notwithstanding Section 605(c)(1) or any other provision of the Original DDA, the Parcel "C" Deed or the Parcel "C" Regulatory Agreement to the contrary:

(i) The Remaining Parcel "C" Affordable Units are identified as a "Remaining Parcel "C" Affordable Unit" on Exhibit A attached hereto. Following the Amendment Effective Date, the Remaining Parcel "C" Affordable Units which are not under contract for sale to a qualified Moderate Income purchaser as of the Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers at the following sales prices (the "New Sales Prices"): Two Hundred Twenty Six Thousand Five Hundred Dollars (\$226,500) for a one-bedroom unit and Two Hundred Forty Six Thousand Five Hundred Dollars (\$246,500) for a two bedroom unit. However, if Terra Serena is unable to entice a qualified Low Income purchaser to purchase a Remaining Parcel "C" Affordable Unit at the applicable New Sales Price required above, Terra Serena shall have the option, but not the obligation, to lower the applicable sales price. For any Remaining Parcel "C" Affordable Unit under contract to a qualified Moderate Income purchaser as of the Amendment Effective Date, Terra Serena shall not be obligated to reduce the sales price to conform to the New Sales Price or to cancel such contract so that the unit is available for sale to a qualified Low Income purchaser; provided, however, that if any such sales contract terminates without the unit having been deeded to the qualified Moderate Income purchaser pursuant to such sales contract, then upon thereafter entering into any new sales contract for such unit, the purchase price for such unit shall be not more than the applicable New Sales Price described above and the new purchaser shall be a qualified Low Income purchaser. Agency shall continue to provide the Parcel "C" Agency Loans for all of the Remaining Parcel "C" Affordable Units, whether sold to a Moderate Income purchaser under a contract in place as of the Amendment Effective Date or to a Low Income purchaser pursuant to this Amendment, but shall not be obligated to increase the amount of the Parcel "C" Agency Loan for any one unit beyond Fifty Thousand Dollars (\$50,000) in order to entice a qualified Low Income purchaser to buy a unit. Likewise, Developer shall have no obligation to lower the applicable sale price for any unit or fund any portion of the sums needed for a Low Income purchaser to acquire a Remaining Parcel "C" Affordable Unit or qualify for a purchase. The last two (2) sentences of Section 605(c)(7) of the Original DDA, relating to Developer's obligation to share in a portion of the Agency's assistance, are hereby deleted in their entirety.

4. Abbott Connection. All references to the Abbott Connection work in the Original DDA are hereby deleted. The Abbott Connection work shall no longer be part of the Approved Infrastructure or Approved Mitigations under the DDA and shall no longer be a requirement under the DDA. Removal of the Abbott Connection work as a requirement under the DDA shall not affect any reimbursements made or required to be made by the Agency or County for any other Approved Infrastructure or Approved Mitigations.

5. Deposits into Escrow; Closing.

(a) Closing. Payment of the In Lieu Payments and recordation of the Parcel “C” Regulatory Amendment shall take place on the date that is five (5) business days after the Amendment Effective Date (the “Amendment Closing Date”), through the Escrow, as evidenced by recordation of the Parcel “C” Regulatory Amendment in the Official Records (the “Amendment Closing”). Upon the Amendment Closing, one-half of the In Lieu Payments shall be paid from Escrow to the Agency and one-half of the In Lieu Payments shall be paid from Escrow to the County. All escrow, recording and other closing costs with respect to the Amendment Closing (collectively, the “Closing Costs”) shall be paid by Terra Serena.

(b) Deposits by Terra Serena. Not later than two (2) business days after the Amendment Effective Date, Terra Serena shall deliver to Escrow Holder the following:

(i) The In Lieu Payments and the Closing Costs;

(ii) A counterpart original of the Parcel “C” Regulatory Amendment, duly executed by Terra Serena, with signatures notarized to the extent required for recording such document in the Official Records; and

(iii) Such other documents reasonably necessary to consummate the Amendment Closing, to the extent consistent with this Amendment, including escrow instructions.

(c) Deposits by the Agency. Not later than two (2) business days after the Amendment Effective Date, Agency shall deliver to Escrow Holder the following:

(i) A counterpart original of the Parcel “C” Regulatory Amendment, duly executed by the Agency, with signatures notarized to the extent required for recording of such document in the Official Records on the Amendment Closing Date; and

(ii) Such other documents reasonably necessary to consummate the Amendment Closing, to the extent consistent with this Amendment, including escrow instructions.

6. Effect of Amendment. Except to the extent modified by this Amendment, the Original DDA shall remain unchanged and in full force and effect. In the event of any conflict between the Original DDA and this Amendment, this Amendment shall control. This Amendment may be executed in counterparts, and when the executed signature pages are combined, shall constitute one single instrument.

Signatures appear on the next page

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

By: _____
Thomas C. Williams, Executive Director

Attest:

By: _____
Mary Lavelle, Agency Secretary

Approved as to Form:

By: _____
Michael J. Ogaz
Redevelopment Agency General Counsel

LB-L/KB TERRA SERENA LLC,
a Delaware limited liability company

By: KB HOME SOUTH BAY INC., a California
corporation, its Operating Member

By: _____
Its: _____

KB HOME SOUTH BAY INC., a California
corporation

By: _____
Its: _____

List of Exhibits:

- Exhibit A: List identifying Unsold Parcel "C" Affordable Units and In Lieu Units
- Exhibit B: Legal Descriptions of In Lieu Units
- Exhibit C: Form of Parcel "C" Regulatory Amendment

EXHIBIT "A"

Amendment to Disposition and Development Agreement

(67 Unsold Parcel "C" Affordable Units, Consisting of 46 In Lieu Units and
21 Remaining Parcel "C" Affordable Units)

In Lieu Units to be released:

Lot 1 -- Building 1 Phases 4 - 6	
Phase 4	224
	226
	321
	323
	325
	327
Phase 5	212
	220
	313
	319
Phase 6	206
	304
	305
	307
	309
	311

Lot 2 -- Building 2 Phases 1 - 3	
Phase 1	222
Phase 3	102
	310
	311
	308

Lot 3 -- Building 3 Phases 7 - 9	
Phase 7	101
	201
	222
	224
	226
	321
	323
Phase 8	325
	327
	212
	220
Phase 9	312
	313
	319
	102
	202
	204
	206
	304
	305
	306
307	
309	
311	
408	

Total 16

Total 5

Total 25

Total
46

EXHIBIT "A"

Remaining Parcel "C" Affordable Units:

Building 1		
Phases 4 - 6 Bedrooms		
Phase 4	222	2
Phase 6	102	2
	201	2
	204	2
	208	1
	210	1
	306	2
	308	1
	310	1

(4) 1-Bedroom Units
(5) 2-Bedroom Units

Total 9

Building 2		
Phases 1 - 3 Bedrooms		
Phase 2	312	2
	319	2
Phase 3	210	1
	208	1
	206	2
	306	2
	307	2
	304	2

(2) 1-Bedroom Units
(6) 2-Bedroom Units

Total 8

Building 3		
Phases 7 - 9 Bedrooms		
Phase 9	208	1
	210	1
	308	1
	310	1

(4) 1-Bedroom Units

Total 4

Total 21

EXHIBIT "B"
Amendment to Disposition and Development Agreement

Legal Descriptions of In Lieu Units

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

PARCEL ONE-A:

Unit 222, as shown on Condominium Plan recorded February 27, 2007, as Document No. 19318871, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Unit is located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL ONE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

PARCEL TWO-A:

Unit 102, 308, 310 and 311, inclusive, as shown on Condominium Plan recorded June 26, 2007, as Document No. 19483292, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL TWO-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

PARCEL THREE-A:

Unit 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded July 18, 2007, as Document No. 19516494, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL THREE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

PARCEL FOUR-A:

Unit 212, 220, 313 and 319, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568693, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FOUR-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

PARCEL FIVE-A:

Unit 206, 304, 305, 307, 309 and 311, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568694, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007,

as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FIVE-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

PARCEL SIX-A:

Units 101, 201, 222, 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570234, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SIX-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

PARCEL SEVEN-A:

Units 212, 220, 312, 313 and 319, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570235, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SEVEN-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

PARCEL EIGHT-A:

Units 102, 202, 204, 206, 304, 305, 306, 307, 309, 311 and 408, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570236, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL EIGHT-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

EXHIBIT "C"
Amendment to Disposition
And Development Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

LB/L-KB TERRA SERENA LLC
c/o KB Home South Bay Inc.
6700 Koll Center Parkway
Pleasanton, California 94566
Attention: Jed Bennett

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELEASE AND AMENDMENT
OF AGREEMENT AFFECTING REAL PROPERTY

THIS RELEASE AND AMENDMENT OF AGREEMENT AFFECTING REAL PROPERTY (this "Amendment") is made as of _____, 2009 by and between THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ("Redevelopment Agency") and LB/L-KB TERRA SERENA LLC, a Delaware limited liability company ("Developer"), with reference to the following facts:

RECITALS

A. Redevelopment Agency and Developer are parties to that certain Agreement Affecting Real Property dated as of November 10, 2005 and recorded on November 10, 2005 as Instrument No. 18674192 in the Official Records of Santa Clara County, California ("Original Agreement"). The Original Agreement imposes certain covenants and restrictions against the real property and improvements thereon described in the Original Agreement as the Site.

B. Developer acquired Parcel "C" (being a portion of the Site) pursuant to that certain Grant Deed recorded in the Official Records of Santa Clara County, California on November 10, 2005 as Instrument 18674191 (the "Parcel C Deed"). Developer has developed Parcel "C" as a residential housing development in accordance with that certain Disposition and Development Agreement by and between Redevelopment Agency and Developer's predecessor in interest, KB Home South Bay Inc. ("KB South Bay"), dated as of January 18, 2005 (the "Original DDA"). The Original DDA has been amended pursuant to that certain Amendment to Disposition and Development Agreement dated for reference purposes as of December 21, 2008 (the "DDA Amendment"). The DDA Amendment became effective on _____, 2009 (the "DDA Amendment Effective Date"). From and after the date of this Amendment, as used in this Amendment and the Original Agreement, "DDA" shall mean the Original DDA, as amended by the DDA Amendment.

C. In accordance with the DDA Amendment, Redevelopment Agency and Developer desire to amend the Original Agreement and remove the covenants and restrictions set forth therein from certain portions of the Site.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE REDEVELOPMENT AGENCY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1. Released Units. Redevelopment Agency and Developer hereby terminate the Original Agreement, and all covenants and restrictions set forth in the Original Agreement, with respect to those portions of the Site more particularly described on Exhibit A attached hereto (the "Released Units"). In accordance with the DDA Amendment, Developer has paid in lieu affordable housing fees for the Released Units of Thirty Seven Thousand Dollars (\$37,000) for each of the forty six (46) Released Units identified on Exhibit A (the "In Lieu Payments"), with one half of the In Lieu Payments (Eight Hundred Fifty One Thousand Dollars (\$851,000)) being paid to the Redevelopment Agency and the other half (Eight Hundred Fifty One Thousand Dollars (\$851,000)) being paid to the County of Santa Clara ("County"). Payment of the In Lieu Payments to the Redevelopment Agency and the County pursuant to the DDA Amendment was in full satisfaction of the obligation of Developer, KB South Bay and their successors and assigns to develop, market and sell the Released Units to Moderate Income purchasers or as affordable units pursuant to the DDA, the Memorandum of Understanding described in the DDA, and the Original Agreement (as amended from time to time) and has been accepted by the Redevelopment Agency and County in lieu of such obligation.

2. Amendment of Original Agreement as to Remaining Lots. With respect to those portions of the Site which are not released from the Original Agreement pursuant to Section 1 of this Amendment (such unreleased portions being the "Remaining Lots"), the Original Agreement shall be amended as provided below, notwithstanding Section 605(c)(1) or any other provision of the Original DDA, the Parcel C Deed, the Original Agreement or the Memorandum of Understanding to the contrary. In accordance with the DDA Amendment, the total number of Parcel C Affordable Units or Affordable Parcel C Units (each as defined in the Original Agreement) is reduced from a total of eighty five (85) to a total of thirty nine (39), with some of such thirty nine (39) units having already been sold and deeded to qualified purchasers, and the balance of such thirty nine (39) units remaining to be sold and deeded to qualified purchasers (such balance remaining to be sold and deeded being the "Remaining Parcel C Affordable Units"). The Remaining Parcel C Affordable Units that were not under contract for sale to a qualified Moderate Income buyer as of the DDA Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers (rather than to Moderate Income purchasers), but shall otherwise continue to be made available for sale as affordable units in accordance with the DDA and Agreement. The references in the Original Agreement to direct subsidies are hereby deleted, the parties having agreed that the assistance to be provided by the Redevelopment Agency to Moderate Income and Low Income households shall be by way of the silent-second mortgages described in the Original Agreement and the DDA. The following shall also apply with respect to the Remaining Parcel C Affordable Units:

(a) From and after the DDA Amendment Effective Date, the Remaining Parcel C Affordable Units that were not under contract for sale to a qualified Moderate Income purchaser as of the DDA Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers at the following sales prices (the "New Sales Prices"): Two

Hundred Twenty Six Thousand Five Hundred Dollars (\$226,500) for a one-bedroom unit and Two Hundred Forty Six Thousand Five Hundred Dollars (\$246,500) for a two bedroom unit. However, if Developer is unable to entice a qualified Low Income purchaser to purchase a Remaining Parcel C Affordable Unit at the applicable sale price required above, Developer shall have the option, but not the obligation, to lower the applicable sale price. For any Remaining Parcel C Affordable Unit that was under contract to a qualified Moderate Income purchaser as of the DDA Amendment Effective Date, Developer shall not be obligated to reduce the sales price to conform to the New Sales Price or to cancel such contract so that the unit is available for sale to a qualified Low Income purchaser; provided, however, that if any such sales contract terminates without the unit having been deeded to the qualified Moderate Income purchaser pursuant to such sales contract, then upon thereafter entering into any new sales contract for such unit, the purchase price for such unit shall be not more than the applicable New Sales Price described above and the new purchaser shall be a qualified Low Income purchaser. The Redevelopment Agency shall continue to provide the Parcel "C" Agency Loans described in the DDA (being the silent second mortgages described in the Original Agreement) for all of the Remaining Parcel C Affordable Units, whether sold to a Moderate Income pursuant to a contract in place with such purchaser as of the DDA Amendment Effective Date or to a Low Income purchaser pursuant to this Amendment, but shall not be obligated to increase the amount of the Parcel "C" Agency Loan for any one unit beyond Fifty Thousand Dollars (\$50,000). Likewise, Developer shall have no obligation to lower the applicable sale price for any unit or fund any portion of the sums needed for a Low Income purchaser to acquire a Remaining Parcel C Affordable Unit or qualify for a purchase. The last two (2) sentences of Section 605(c)(7) of the Original DDA, relating to Developer's obligation to share in a portion of the Redevelopment Agency's assistance, have been deleted in their entirety.

3. Defined Terms; Effect of Amendment; Counterparts. As used in this Amendment, "Low Income" means a household that does not exceed eighty percent (80%) of the Santa Clara County median income, as determined, updated and published annually by the California Department of Housing and Community Development, adjusted for household size appropriate for the unit, who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to Division 31 of the Health and Safety Code, as defined in California Health and Safety Code Section 50093. From and after the date hereof, the term "Agreement" as used in the Original Agreement or this Amendment shall mean the Original Agreement, as amended by this Amendment. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original Agreement. Except to the extent modified by this Amendment, the Original Agreement shall remain unchanged and in full force and effect. In the event of a conflict between this Amendment on the one hand, and the Original DDA, Parcel C Deed or Original Agreement on the other hand, this Amendment shall control with respect to such conflict. This Amendment may be executed in counterparts, and when the executed signature pages are combined, shall constitute one single instrument. To the extent any portion of the Site was released from the Original Agreement prior to the date hereof, this Amendment shall not operate to subject any such released portions of the Site to the lien or encumbrance of the Original Agreement, as modified by this Amendment.

[Signature appear starting on the next page]

IN WITNESS WHEREOF, the Redevelopment Agency and Developer have executed this Amendment as of the date first set forth above.

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By: _____
Thomas C. Williams, Executive Director

ATTEST:

Mary Lavelle, Agency Secretary

APPROVED AS TO FORM AND LEGALITY:

By: _____
Michael J. Ogaz
Redevelopment Agency General Counsel

LB-L/KB TERRA SERENA LLC,
a Delaware limited liability company

By: KB HOME SOUTH BAY INC., a
California corporation, its Operating Member

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF RELEASED UNITS

(List and Legal Descriptions of Released Units)

List of Released Units:

	Lot 1 - Building 1
	Phases 4 - 6
Phase 4	224
	226
	321
	323
	325
	327
Phase 5	212
	220
	313
	319
Phase 6	206
	304
	305
	307
	309
	311

	Lot 2 - Building 2
	Phases 1 - 3
Phase 1	222
Phase 3	102
	310
	311
	308

	Lot 3 - Building 3
	Phases 7 - 9
Phase 7	101
	201
	222
	224
	226
	321
	323
	325
Phase 8	327
	212
	220
	312
	313
Phase 9	319
	102
	202
	204
	206
	304
	305
	306
	307
	309
311	
408	

Total 16

Total 5

Total 25

Total

46

EXHIBIT "A"
List and Legal Descriptions of Released Units

Legal Descriptions of Released Units

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

PARCEL ONE-A:

Unit 222, as shown on Condominium Plan recorded February 27, 2007, as Document No. 19318871, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Unit is located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL ONE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

PARCEL TWO-A:

Unit 102, 308, 310 and 311, inclusive, as shown on Condominium Plan recorded June 26, 2007, as Document No. 19483292, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL TWO-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

PARCEL THREE-A:

Unit 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded July 18, 2007, as Document No. 19516494, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL THREE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

PARCEL FOUR-A:

Unit 212, 220, 313 and 319, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568693, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FOUR-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

EXHIBIT "A"

Page 3 of 5

EXHIBIT "C"

Page 7 of 11

EXHIBIT "B"

Page 19 of 23

PARCEL FIVE-A:

Unit 206, 304, 305, 307, 309 and 311, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568694, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FIVE-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

PARCEL SIX-A:

Units 101, 201, 222, 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570234, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SIX-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

PARCEL SEVEN-A:

Units 212, 220, 312, 313 and 319, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570235, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document

EXHIBIT "A"

Page 4 of 5

EXHIBIT "C"

Page 8 of 11

EXHIBIT "B"

Page 20 of 23

No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SEVEN-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

PARCEL EIGHT-A:

Units 102, 202, 204, 206, 304, 305, 306, 307, 309, 311 and 408, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570236, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL EIGHT-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____,
Notary Public, personally appeared _____, who 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(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
(Signature)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____,
Notary Public, personally appeared _____, who 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(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
(Signature)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

LB/L-KB TERRA SERENA LLC
c/o KB Home South Bay Inc.
6700 Koll Center Parkway
Pleasanton, California 94566
Attention: Jed Bennett

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELEASE AND AMENDMENT
OF AGREEMENT AFFECTING REAL PROPERTY

THIS RELEASE AND AMENDMENT OF AGREEMENT AFFECTING REAL PROPERTY (this "Amendment") is made as of _____, 2009 by and between THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ("Redevelopment Agency") and LB/L-KB TERRA SERENA LLC, a Delaware limited liability company ("Developer"), with reference to the following facts:

RECITALS

A. Redevelopment Agency and Developer are parties to that certain Agreement Affecting Real Property dated as of November 10, 2005 and recorded on November 10, 2005 as Instrument No. 18674192 in the Official Records of Santa Clara County, California ("Original Agreement"). The Original Agreement imposes certain covenants and restrictions against the real property and improvements thereon described in the Original Agreement as the Site.

B. Developer acquired Parcel "C" (being a portion of the Site) pursuant to that certain Grant Deed recorded in the Official Records of Santa Clara County, California on November 10, 2005 as Instrument 18674191 (the "Parcel C Deed"). Developer has developed Parcel "C" as a residential housing development in accordance with that certain Disposition and Development Agreement by and between Redevelopment Agency and Developer's predecessor in interest, KB Home South Bay Inc. ("KB South Bay"), dated as of January 18, 2005 (the "Original DDA"). The Original DDA has been amended pursuant to that certain Amendment to Disposition and Development Agreement dated for reference purposes as of December 21, 2008 (the "DDA Amendment"). The DDA Amendment became effective on _____, 2009 (the "DDA Amendment Effective Date"). From and after the date of this Amendment, as used in this Amendment and the Original Agreement, "DDA" shall mean the Original DDA, as amended by the DDA Amendment.

C. In accordance with the DDA Amendment, Redevelopment Agency and Developer desire to amend the Original Agreement and remove the covenants and restrictions set forth therein from certain portions of the Site.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE REDEVELOPMENT AGENCY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1. Released Units. Redevelopment Agency and Developer hereby terminate the Original Agreement, and all covenants and restrictions set forth in the Original Agreement, with respect to those portions of the Site more particularly described on Exhibit A attached hereto (the "Released Units"). In accordance with the DDA Amendment, Developer has paid in lieu affordable housing fees for the Released Units of Thirty Seven Thousand Dollars (\$37,000) for each of the forty six (46) Released Units identified on Exhibit A (the "In Lieu Payments"), with one half of the In Lieu Payments (Eight Hundred Fifty One Thousand Dollars (\$851,000)) being paid to the Redevelopment Agency and the other half (Eight Hundred Fifty One Thousand Dollars (\$851,000)) being paid to the County of Santa Clara ("County"). Payment of the In Lieu Payments to the Redevelopment Agency and the County pursuant to the DDA Amendment was in full satisfaction of the obligation of Developer, KB South Bay and their successors and assigns to develop, market and sell the Released Units to Moderate Income purchasers or as affordable units pursuant to the DDA, the Memorandum of Understanding described in the DDA, and the Original Agreement (as amended from time to time) and has been accepted by the Redevelopment Agency and County in lieu of such obligation.

2. Amendment of Original Agreement as to Remaining Lots. With respect to those portions of the Site which are not released from the Original Agreement pursuant to Section 1 of this Amendment (such unreleased portions being the "Remaining Lots"), the Original Agreement shall be amended as provided below, notwithstanding Section 605(c)(1) or any other provision of the Original DDA, the Parcel C Deed, the Original Agreement or the Memorandum of Understanding to the contrary. In accordance with the DDA Amendment, the total number of Parcel C Affordable Units or Affordable Parcel C Units (each as defined in the Original Agreement) is reduced from a total of eighty five (85) to a total of thirty nine (39), with some of such thirty nine (39) units having already been sold and deeded to qualified purchasers, and the balance of such thirty nine (39) units remaining to be sold and deeded to qualified purchasers (such balance remaining to be sold and deeded being the "Remaining Parcel C Affordable Units"). The Remaining Parcel C Affordable Units that were not under contract for sale to a qualified Moderate Income buyer as of the DDA Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers (rather than to Moderate Income purchasers), but shall otherwise continue to be made available for sale as affordable units in accordance with the DDA and Agreement. The references in the Original Agreement to direct subsidies are hereby deleted, the parties having agreed that the assistance to be provided by the Redevelopment Agency to Moderate Income and Low Income households shall be by way of the silent-second mortgages described in the Original Agreement and the DDA. The following shall also apply with respect to the Remaining Parcel C Affordable Units:

(a) From and after the DDA Amendment Effective Date, the Remaining Parcel C Affordable Units that were not under contract for sale to a qualified Moderate Income purchaser as of the DDA Amendment Effective Date shall be made available for sale exclusively to qualified Low Income purchasers at the following sales prices (the "New Sales Prices"): Two

Hundred Twenty Six Thousand Five Hundred Dollars (\$226,500) for a one-bedroom unit and Two Hundred Forty Six Thousand Five Hundred Dollars (\$246,500) for a two bedroom unit. However, if Developer is unable to entice a qualified Low Income purchaser to purchase a Remaining Parcel C Affordable Unit at the applicable sale price required above, Developer shall have the option, but not the obligation, to lower the applicable sale price. For any Remaining Parcel C Affordable Unit that was under contract to a qualified Moderate Income purchaser as of the DDA Amendment Effective Date, Developer shall not be obligated to reduce the sales price to conform to the New Sales Price or to cancel such contract so that the unit is available for sale to a qualified Low Income purchaser; provided, however, that if any such sales contract terminates without the unit having been deeded to the qualified Moderate Income purchaser pursuant to such sales contract, then upon thereafter entering into any new sales contract for such unit, the purchase price for such unit shall be not more than the applicable New Sales Price described above and the new purchaser shall be a qualified Low Income purchaser. The Redevelopment Agency shall continue to provide the Parcel "C" Agency Loans described in the DDA (being the silent second mortgages described in the Original Agreement) for all of the Remaining Parcel C Affordable Units, whether sold to a Moderate Income pursuant to a contract in place with such purchaser as of the DDA Amendment Effective Date or to a Low Income purchaser pursuant to this Amendment, but shall not be obligated to increase the amount of the Parcel "C" Agency Loan for any one unit beyond Fifty Thousand Dollars (\$50,000). Likewise, Developer shall have no obligation to lower the applicable sale price for any unit or fund any portion of the sums needed for a Low Income purchaser to acquire a Remaining Parcel C Affordable Unit or qualify for a purchase. The last two (2) sentences of Section 605(c)(7) of the Original DDA, relating to Developer's obligation to share in a portion of the Redevelopment Agency's assistance, have been deleted in their entirety.

3. Defined Terms; Effect of Amendment; Counterparts. As used in this Amendment, "Low Income" means a household that does not exceed eighty percent (80%) of the Santa Clara County median income, as determined, updated and published annually by the California Department of Housing and Community Development, adjusted for household size appropriate for the unit, who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to Division 31 of the Health and Safety Code, as defined in California Health and Safety Code Section 50093. From and after the date hereof, the term "Agreement" as used in the Original Agreement or this Amendment shall mean the Original Agreement, as amended by this Amendment. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original Agreement. Except to the extent modified by this Amendment, the Original Agreement shall remain unchanged and in full force and effect. In the event of a conflict between this Amendment on the one hand, and the Original DDA, Parcel C Deed or Original Agreement on the other hand, this Amendment shall control with respect to such conflict. This Amendment may be executed in counterparts, and when the executed signature pages are combined, shall constitute one single instrument. To the extent any portion of the Site was released from the Original Agreement prior to the date hereof, this Amendment shall not operate to subject any such released portions of the Site to the lien or encumbrance of the Original Agreement, as modified by this Amendment.

[Signature appear starting on the next page]

IN WITNESS WHEREOF, the Redevelopment Agency and Developer have executed this Amendment as of the date first set forth above.

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By: _____
Thomas C. Williams, Executive Director

ATTEST:

Mary Lavelle, Agency Secretary

APPROVED AS TO FORM AND LEGALITY:

By: _____
Michael J. Ogaz
Redevelopment Agency General Counsel

LB-L/KB TERRA SERENA LLC,
a Delaware limited liability company

By: KB HOME SOUTH BAY INC., a
California corporation, its Operating Member

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF RELEASED UNITS

(List and Legal Descriptions of Released Units)

List of Released Units:

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	226
	321
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	220
	313
	319
Phase 6	206
	304
	305
	307
	309
	311

	Lot 2 - Building 2 Phases 1 - 3
Phase 1	222
Phase 3	102
	310
	311
	308

	Lot 3 - Building 3 Phases 7 - 9
Phase 7	101
	201
	222
	224
	226
	321
	323
	325
Phase 8	327
	212
	220
	312
	313
Phase 9	319
	102
	202
	204
	206
	304
	305
	306
	307
	309
311	
408	

Total 16

Total 5

Total 25

Total

46

EXHIBIT "A"
List and Legal Descriptions of Released Units

Legal Descriptions of Released Units

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

PARCEL ONE-A:

Unit 222, as shown on Condominium Plan recorded February 27, 2007, as Document No. 19318871, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Unit is located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL ONE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel ONE-A above and described in the Declaration.

PARCEL TWO-A:

Unit 102, 308, 310 and 311, inclusive, as shown on Condominium Plan recorded June 26, 2007, as Document No. 19483292, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 2, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL TWO-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel TWO-A above and described in the Declaration.

PARCEL THREE-A:

Unit 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded July 18, 2007, as Document No. 19516494, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL THREE-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel THREE-A above and described in the Declaration.

PARCEL FOUR-A:

Unit 212, 220, 313 and 319, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568693, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FOUR-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FOUR-A above and described in the Declaration.

PARCEL FIVE-A:

Unit 206, 304, 305, 307, 309 and 311, inclusive, as shown on Condominium Plan recorded August 29, 2007, as Document No. 19568694, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 1, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL FIVE-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel FIVE-A above and described in the Declaration.

PARCEL SIX-A:

Units 101, 201, 222, 224, 226, 321, 323, 325 and 327, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570234, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SIX-B:

Building Common Area Parcel 1, as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SIX-A above and described in the Declaration.

PARCEL SEVEN-A:

Units 212, 220, 312, 313 and 319, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570235, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document

No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL SEVEN-B:

Building Common Area Parcel 2, as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel SEVEN-A above and described in the Declaration.

PARCEL EIGHT-A:

Units 102, 202, 204, 206, 304, 305, 306, 307, 309, 311 and 408, inclusive, as shown on Condominium Plan recorded August 30, 2007, as Document No. 19570236, in the Official Records of the County of Santa Clara ("Condominium Plan"), as defined in the Declaration of Covenants Conditions and Restrictions of Luna at Terra Serena, a Common Interest Development recorded March 1, 2007, as Document No. 19323146, Official Records, and all amendments and/or annexations thereto (the "Declaration").

Said Units are located on Lot 3, as shown on the final map of Tract 9699, filed for record on March 9, 2006, in Book 798 of Maps, at pages 12 through 17, inclusive, in the Official Records of the County of Santa Clara, State of California ("Map").

PARCEL EIGHT-B:

Building Common Area Parcel 3, as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

Excepting therefrom, all numbered units as shown on the Condominium Plan referred to in Parcel EIGHT-A above and described in the Declaration.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____,
Notary Public, personally appeared _____, who 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(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature) (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____,
Notary Public, personally appeared _____, who 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(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
(Signature)

Silicon Valley / San Jose Business Journal - December 8, 2008
<http://sanjose.bizjournals.com/sanjose/stories/2008/12/08/story1.html>

SILICON VALLEY / SAN JOSE
Business Journal

Friday, December 5, 2008

Market rate prices beat affordable housing

Silicon Valley / San Jose Business Journal - by [Katherine Conrad](#)

In a sign that housing policies around the South Bay are “out of whack,” market-rate homes are now selling for the same price — or less — in San Jose, Fremont and Milpitas as homes officially designated as “affordable.”

For developers, who are required to set aside a percentage of units for buyers making less than the median income, the situation has become frustrating.

“Why would you pay \$510,000 when you can buy market rate for \$460,000 or \$470,000?” asked Cheryl O’Connor, chair of the Home Builders Association of Northern California, who handled marketing for San Jose’s Village Square project, the former site of Lou’s Village on West San Carlos Street.

O’Connor said when the SummerHill Homes’ project was on the drawing board, the median price of a condo was \$600,000, and a below-market-rate unit of \$510,000 made sense.

“But that price stayed stagnant,” she said, “while the market price came down. The point is, (the policy) is out of whack.”

Against this backdrop, the San Jose City Council is scheduled on Dec. 9 to discuss expanding the inclusionary zoning policy from covering one third of the city to cover all of it. Currently, San Jose’s policy is designed to ensure that 20 percent of all homes built in a redevelopment area are affordable. To qualify for one of these homes under the current complicated formula, a family of four cannot earn more than \$126,600 a year.

San Jose City Councilman Sam Liccardo noted that it’s unfair for developers building in a redevelopment area to be required to set aside 20 percent of their units as “affordable” when the developer building homes across the street doesn’t have to follow the same rules.

Rethinking affordable housing

In a nod to the current depressed market, staff has recommended delaying implementation of the policy until at least 2012, when the market is expected to recover.

San Jose Mayor Chuck Reed, however, has proposed waiting until developers build more than 2,300 units in one year. On average, 2,300 units have been built during each of the past 10 years in San Jose.

Reed understands he is walking a fine line, trying to provide the city’s work force with affordable housing while not making the city unfriendly to development.

“I am trying to achieve three objectives,” he said. “One, to avoid litigation. Two, to avoid a ballot measure. And three, to avoid killing the housing market.”

It’s a tall order given a development community focused on survival.

Chris Apostolopoulos, KB Home’s Northern California division president, said he cannot find buyers who meet the affordable housing parameters for KB projects in Fremont, San Jose and Milpitas. Part of the reason for the lack of interest is the units that the city designated as inclusionary zoning are deed-restricted as to when, to whom and how the units are sold, he said

“It’s very onerous,” Apostolopoulos said. “In a market where the market rate is affordable, there is no reason to buy these homes. So there is no demand.”

Barry Swenson, president of Barry Swenson Builder, has encountered the same challenge at several of his San Jose projects. He said for most units, there’s only a \$3,000 to \$5,000 difference between “affordable” units and market rate. And again, qualifying buyers don’t want to deal with affordable housing restrictions when they decide to sell.

“We have 30 units around here that we can’t sell because the buyers don’t want to be restricted,” Swenson said. “As long as it’s the same price and there’s restrictions, why buy restricted and tie it up for 55 years? The thing is there’s a lot of rules, and they don’t change when the market changes.”

No. 1 issue is housing

Shiloh Ballard, who heads the housing task force for the Silicon Valley Leadership Group, said no matter how far the market has fallen, there’s still need for affordable housing for the valley’s work force. For companies trying to hire, housing remains the No. 1 concern.



Vicki Thompson

The SummerHill Homes project constructed on the former Lou’s Village site has gone topsy-turvy -- affordable homes are priced at \$510,000 while the market-rate homes are selling for about \$460,000.

[View Larger](#)

"In the grand scheme of things, we don't like inclusionary zoning," Ballard said. "Where the developers sit on product, that's not OK. But there are right ways of doing it."

She noted that one of the biggest hurdles, finding qualified buyers, should not be the job of the developer.

"Some cities perform the function of finding a turnkey buyer, who are right there at the ready," she said.

But just because the market is struggling now doesn't mean it will still be struggling in a few years. In the meantime, she said, "You don't throw the baby out with the bath water."

Still, the city's timing for discussing the issue has come under attack.

"It really amuses me to talk about the desperate need for affordable housing when the median home price of \$375,000 in the Bay Area is actually going far less than the below market-rate units," said Joseph Perkins, president of the Home Builders Association.

Perkins said he understands the need for work force housing, but he said he questioned whether the entire burden of providing such housing ought to be the developers' responsibility.

"Every time I hear business ask for work force housing, I ask, 'Are you doing your fair share?'"

Perkins said every employer ought to contribute to a fund to help build affordable housing.

Katherine Conrad can be reached at 408.299.1820 or kconrad@bizjournals.com.

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