

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS APPROVING THE AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING, OWNER PARTICIPATION AND LOAN AGREEMENT, AND AFFORDABLE HOUSING REGULATORY AGREEMENT WITH MIL ASPEN ASSOCIATES, LP

WHEREAS, the Redevelopment Agency of the City of Milpitas (“Agency”) and MIL Aspen Associates, L.P. (“Aspen”) entered into a Memorandum of Understanding dated as of April 3, 2007 (the “Original MOU”) relating to affordable housing located at 1666 South Main Street in the City of Milpitas and known as Santa Clara County Assessor’s Parcel Number 086-22-023 (the “Property”); and

WHEREAS, as contemplated by the Original MOU, Agency and Aspen entered into an Owner Participation and Loan Agreement (the “Original OPA”) and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the “Original Regulatory Agreement”) dated as of April 17, 2007 with respect to the Property; and

WHEREAS, pursuant to the Original MOU, Original OPA and Original Regulatory Agreement, 100 of the residential units are to be occupied or available for occupancy by very low-income households for a period of not less than 55 years; and

WHEREAS, in order for the project to be feasible, Aspen planned to obtain federal and state tax credits from the California Tax Credit Allocation Committee (CTCAC). Based on the change in the CTCAC affordability allocation requirement, the previously-executed Original MOU, Original OPA, and the Original Regulatory Agreement are required to be amended to reflect the accurate affordability in the project awarded by CTCAC. The reallocation of the affordable units changes the 100 units to be occupied by very low-income households to 95 units available to very low-income households and 5 units available to low-income households; and

WHEREAS, the parties hereto also desire for Aspen to install security cameras on the Property to deter crime.

NOW, THEREFORE, the Redevelopment Agency Board hereby finds, determines, and resolves as follows:

1. The Board has considered the full record before it, 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 it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Executive Director is authorized to execute amendments to the Owner Participation and Loan Agreement, the Memorandum of Understanding, and the Regulatory Agreement.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary

Robert Livengood, Chair

APPROVED AS TO FORM:

Michael J. Ogaz, Agency Counsel

*MIL Aspen Associates,
a California limited partnership*

March 17, 2010

Felix J. Reliford
Principal Housing Planner
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Re: **Affordable Housing Regulatory Agreement**
Request for Amendment to Exhibit B

Dear Mr. Reliford:

MIL Aspen Associates, a California limited partnership (the "Partnership"), owner of Aspen Family Apartments, a low income affordable housing project in the City of Milpitas, is writing to kindly request that the Redevelopment Agency for the City of Milpitas (the "RDA") review Exhibit B to the Partnership's Affordable Housing Regulatory Agreement currently in place with RDA, and amend Exhibit B to match the rents and AMI's as set forth in the Preliminary Reservation Letter ("PRL") and accompanying staff report issued by the California Tax Credit Allocation Committee ("CTCAC").

The reason for this request is that upon receipt of a tax credit award for any given project, CTCAC will issue a PRL. In this case, the PRL contained errors and did not reflect the rents and AMI as set for the Partnership's application to CTCAC.

Though the error was caught a while back and discussed with CTCAC, it was not until the project was complete and the Partnership began to prepare to convert to permanent financing, that the Permanent Lender, Prudential Mortgage, requested that we correct the CTCAC PRL errors and make sure that the RDA's Exhibit B, coincided.

Unfortunately, we are on a rigid timeline and must have this discrepancy remedied by April 23, 2010, the day on which our construction loan matures.

We appreciate the RDA's consideration of our request as stated above, and are happy to address any questions or concerns.

Please feel free to contact us at any time.

Sincerely,


Andrew Hanna
President
Global Premier Development, Inc.
Administrative General Partner

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING
(Aspen Apartments)

This Amendment to Memorandum of Understanding (“Amendment”) is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic (“Agency”), CITY OF MILPITAS, a public body, corporate and politic (“City”), and MIL Aspen Associates, a California Limited Partnership (“Developer”).

RECITALS

A. Agency, City, and Developer entered into that certain Memorandum of Understanding dated as of April 3, 2007 (the “Original MOU”) relating to affordable housing located on 1666 South Main Street in the City of Milpitas and known as Santa Clara County Assessors’ Parcel Number 086-22-023 (the “Property”).

B. As contemplated by the Original MOU, Agency and Developer entered into that certain Owner Participation Agreement dated as of April 17, 2007 (the “Original OPA”) with respect to the Property.

C. Pursuant to the Original MOU and Original OPA, 100 of the residential units are to be occupied or available for occupancy by very low-income households for a period of not less than 55 years.

D. In order for the project to be feasible, the Developer planned to obtain federal and state tax credits from the California Tax Credit Allocation Committee (CTCAC). Based on the change in the CTCAC affordability allocation requirement, the previously executed Original MOU is required to be amended to reflect the accurate affordability in the project awarded by CTCAC. The reallocation of the affordable units changes the 100 units to be occupied by very low-income households to 95 units available to very low-income households and 5 units available to low-income households.

F. The Agency and City have determined that amending the Original MOU, the Original OPA and the Regulatory Agreement on the terms and conditions set forth in this

Amendment, the OPA Amendment, and the Regulatory Agreement Amendment will effectuate the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, is in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and is 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, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE REDEVELOPMENT AGENCY AND DEVELOPER HEREBY AGREE TO AMEND THE ORIGINAL AGREEMENT AS FOLLOWS:

I. Paragraph 4 repealed in its entirety and amended to read as follows:

4. Affordability Requirements. The Project will be subject to recorded regulatory restrictions that will require 100 of the residential units to be offered for rent and occupancy by very low- and low-income households at rents no greater than permitted by TCAC and the applicable provisions of California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) in accordance with the schedule set forth below for a term of at least fifty-five (55) years.

Number of Units by Unit Size and Targeted Area median Income (AMI) Levels

	45% AMI	50% AMI	60% AMI	Sub-Total	Manager's Unit	Total
2-Bedroom	22	25	4	51	n/a	51
3-Bedroom	23	25	1	49	1	50
Total	45	50	5	100	1	101

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II. Affect 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.

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

MIL Aspen Associates, A California Limited
Partnership

By: _____
Thomas C. Williams, Executive Director

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

By: Global Premier Development, Inc.
Its: Managing Member

By: 
Andrew Hanha, President

Attest:

Mary Lavelle, Agency Secretary

Approved as to Form:

Michael J. Ogaz
Redevelopment Agency General Counsel

CITY:
City of Milpitas

By: _____
Thomas C. Williams, City Manager

Attest:

Mary Lavelle, City Clerk

Approved as to Form:

Michael J. Ogaz
City Attorney

ACKNOWLEDGMENT

State of California
County of Orange

On March 29, 2010 before me, Kelli Anne Voges, Notary Public
(insert name and title of the officer)

personally appeared Andrew HANNA,
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 Kelli Anne Voges



**AMENDMENT NO. 1 TO OWNER PARTICIPATION AND LOAN AGREEMENT by
and between THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS and
MIL ASPEN ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP**

This Amendment to Owner Participation and Loan Agreements (“Amendment”) is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic (“Agency”) and MIL Aspen Associates, a California Limited Partnership (“Developer”).

RECITALS

A. Agency, City and Developer entered into that certain Memorandum of Understanding dated as of April 3, 2007 (the “Original MOU”) relating to affordable housing located at 1666 South Main Street in the City of Milpitas and known as Santa Clara County Assessors’ Parcel Number 086-22-023 (the “Property”).

B. As contemplated by the Original MOU, Agency and Developer entered into that certain Owner Participation Agreement dated as of April 17, 2007 (the “Original OPA”) with respect to the Property.

C. Pursuant to the Original OPA and Original MOU, 100 of the residential units are to be occupied or available for occupancy by very low-income households for a period of not less than 55 years.

D. In order for the project to be feasible, the Developer planned to obtain federal and state tax credits from the California Tax Credit Allocation Committee (CTCAC). Based on the change in the CTCAC affordability allocation requirement, the previously-executed Original OPA is required to be amended to reflect the accurate affordability in the project awarded by CTCAC. The reallocation of the affordable units changes the 100 units to be occupied by very low-income households to 95 units available to very low-income households and 5 units available to low-income households.

E. The Agency has determined that amending the Original OPA, the Original MOU and the Regulatory Agreement on the terms and conditions set forth in this Amendment, the MOU Amendment, and the Regulatory Agreement Amendment will effectuate the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, is in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and is in accord with the public purposes and provisions of all applicable federal, state, and local laws and requirements, including without limitation State Redevelopment laws.

F. Due to the public nature of the roads and potential criminal activity, Developer will install security cameras.

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

I. Recital B is repealed in its entirety and amended to read as follows:

B. Developer is the owner of, or has the contractual right to purchase, the real property located in the City of Milpitas (“**City**”) at 1666 South Main Street, known as Santa Clara County Assessor’s Parcel No. 086-22-023, and more particular described in Exhibit A attached hereto (the “**Property**”). The Property is located within the Project Area and within the area governed by the Midtown specific Plan (the “**Specific Plan**”). Developer has proposed to develop a multifamily residential project (the “**Project**”) consisting of one hundred and one (101) units, one hundred (100) of which will be rented at affordable housing cost to very low- and low-income households as more particularly described herein and in an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants to be recorded against the Property.

II. Recital F is repealed in its entirety and amended to read as follows:

F. Concurrently herewith: (i) Developer shall execute a secured promissory note (“**Note**”) in the amount of the Loan and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) which shall provide Agency with a security interest in the Property and the Project, (ii) Developer and Agency shall execute an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (“**Regulatory Agreement**”) which shall require Project rents to be affordable to very low- and low-income households for a term of not less than 55 years, and (iii) Developer and Agency shall enter into an Option and Right of First Refusal Agreement (the “**Option Agreement**”) pursuant to which Agency shall have the right to acquire the Property and the Project following expiration of the low-income tax credit compliance period. This Agreement, the Note, the Deed of trust, the Regulatory Agreement, and the Option Agreement are collectively hereinafter referred to as the “Agency Document.”

III. Paragraph 3.3 is repealed in its entirety and amended to read as follows:

3.3 Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that 100 of the residential units developed within the Project shall be rented at an affordable cost to households of very low- and low-income in accordance with the terms hereof and the Regulatory Agreement which the Parties shall execute substantially in the form attached hereto as Exhibit D, including any amendments thereto, concurrently with the execution of this Agreement, and which shall be recorded in the Official Records on the date that Developer acquires the Property.

IV. Security Cameras. Developer agrees that within sixty (60) days of the execution of this Amendment, it shall install security cameras at the Project with the ability to record and store thirty (30) days worth of information. The locations and technical specifications of the cameras will be subject to the approval of the Milpitas Police Chief. Developer shall maintain the equipment in good working order and repair equipment that is damaged or inoperable within 10 days from notice of equipment problems. Upon request, Developer shall provide the Milpitas Police Department or other law enforcement agencies, with copies of video footage within 24 hours of the request.

V. Affect of Amendment. Except to the extent modified by this Amendment, the Original OPA shall remain unchanged and in full force and effect. In the event of any conflict between the Original OPA 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.

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

MIL Aspen Associates, A California Limited
Partnership

By: _____
Thomas C. Williams, Executive Director

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

By: Global Premier Development, Inc.
Its: Managing Member

By: 
Andrew Hanna, President

Attest:

Mary Lavelle, Agency Secretary

By: _____

Approved as to Form:

Its: _____

Michael J. Ogaz,
Redevelopment Agency Counsel

ACKNOWLEDGMENT

State of California
County of Orange

On March 29, 2010 before me, Kelli Anne Voges, Notary Public
(insert name and title of the officer)

personally appeared Andrew Hanna,
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 Kelli Anne Voges

(Seal)



RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AMENDMENT NO. 1 OF THE AFFORDABLE HOUSING REGULATORY
AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS by and between
REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS and MIL ASPEN
ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP**

THIS AMENDMENT OF AFFORDABLE HOUSING REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "Amendment") is made as of March 29, 2010 by and between REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ("Redevelopment Agency and MIL Aspen Associates, a California Limited Partnership ("Owner")), with reference to the following facts:

RECITALS

A. Redevelopment Agency and Owner are parties to the Affordable Housing Regulatory Agreement and Declaration of Restricted Covenants dated as of April 17, 2007 and recorded on May 1, 2007 as Instrument No. 19406638 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 Property.

B. Owner acquired certain real property located at 1666 South Main Street in the City of Milpitas, California and more particularly describe in Exhibit A, attached to the Original Agreement (the "Property"). Owner has developed the Property as a 101 residential housing development. The Original Agreement requires 100 of the residential units to be occupied or available for occupancy by very low-income households for a period of not less than 55 years.

C. In order for the project to be feasible, the Owner planned to obtain federal and state tax credits from the California Tax Credit Allocation Committee (CTCAC). Based on the change in the CTCAC affordability allocation requirement, the previously-executed Regulatory Agreement is required to be amended to reflect the accurate affordability in the project awarded by CTCAC. The reallocation of the affordable units changes the 100 units to be occupied by

very low income households to 95 units available to very low income households and 5 units available to low income households.

D. The Agency has determined that amending the Regulatory Agreement on the terms and conditions set forth in this Amendment will effectuate the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, is in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and is 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, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE REDEVELOPMENT AGENCY AND OWNER HEREBY AGREE TO AMEND THE ORIGINAL AGREEMENT AS FOLLOWS:

I. The following definition is added to Paragraph 1 Definitions:

“Low-Income” means the annual gross household income that is greater than fifty percent (50%) of AMI but less than eighty percent (80%) AMI.

II. Paragraph 2.1 is repealed in its entirety and amended to read as follows:

2.1 Affordability Requirements. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, 100 of the dwelling units in the Project shall be Rent-Restricted (as defined below) and occupied (or if vacant, available for occupancy) by Eligible Households whose income does not exceed Very Low- or Low-Income in accordance with Exhibit B. A dwelling unit shall qualify as “Rent Restricted” if the gross rent charged for such unit does not exceed the Qualifying Rent for the applicable household income category as set forth in Exhibit B, as adjusted for assumed household size in accordance with California Tax Credit Allocation Committee (“TCAC”) guidelines.

III. Paragraph 2.2 is repealed in its entirety and amended to read as follows:

2.2 Rents for Restricted Units. Rents for Restricted Units shall be limited to Qualifying Rents. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant’s adjusted income increases to exceed the qualifying limit for such Restricted Unit. A household which at initial occupancy qualifies as Very Low- or Low-Income shall be treated as continuing to be of Very Low-Income or Low-Income so long as the household’s income does not exceed 140% of the applicable income limit. In the event the household income of a household that qualified as Very Low- or Low-Income at initial occupancy exceeds the applicable income limit for a unit, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted. Whenever a tenant in a unit initially qualifying as a unit at the 45%

income limit moves out, that unit will be rented to a tenant that qualifies as an Eligible Household at the 45% income limit. Whenever a tenant in a unit initially qualifying as a unit at the 50% income limit moves out, that unit will be rented to a tenant that qualifies as an Eligible Household at the 50% income limit. Whenever a tenant in a unit initially qualifying as a unit at the 60% income limit moves out, that unit will be rented to a tenant that qualifies as an Eligible Household at the 60% income limit.

IV. Paragraph 2.3 is repealed in its entirety and amended to read as follows:

2.3 Unit Sizes, Design and Location. The Restricted Units shall consist of fifty-one (51) two-bedroom units and forty-nine (49) three-bedroom units allocated among affordability categories as set forth in Exhibit B. In renting Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives or works in the City of Milpitas, second preference to Eligible Households in which at least one member is the parent of a person who lives or works in the City of Milpitas, and third preference to Eligible Households in which at least one member lives or works in the County of Santa Clara, unless compliance with the foregoing criteria is prohibited by law or state or federal sources of financing for the Project.

V. Exhibit B is repealed in its entirety and replaced with Exhibit B attached hereto.

VI. Effect of Amendment. Except to the extent modified by this Amendment, the Original Agreement shall remain unchanged and in full force and effect. In the event of any conflict between the Original Agreement 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.

IN WITNESS WHEREOF, the Redevelopment Agency and Owner 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:

By: _____
Mary Lavelle, Agency Secretary

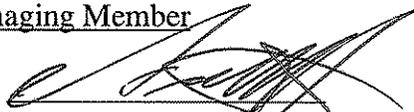
APPROVED AS TO FORM AND LEGALITY:

By: _____
Michael J. Ogaz
Redevelopment Agency Counsel

OWNER, MIL Aspen Associates, a California Limited Partnership

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

By: Global Premier Development, Inc.
Its: Managing Member

By: 
Andrew Hanna, President

Amended Exhibit B (Regulatory Agreement)

Number of Units Size and Targeted Area Median Income (AMI) Levels

	45% AMI	50% AMI	60% AMI	Sub-Total	Manager's Unit	
2-Bedroom	22	25	4	51	N/A	51
3-Bedroom	23	25	1	49	1	50
Total	45	50	5	100	1	101

ACKNOWLEDGMENT

State of California
County of Orange

On March 29, 2010 before me, Kelli Anne Voges, Notary Public
(insert name and title of the officer)

personally appeared Andrew Hanna
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 Kelli Anne Voges

(Seal)

