

OWNER PARTICIPATION AGREEMENT

by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

INTEGRAL COMMUNITIES McCANDLESS, LLC

As of August 3, 2010

Exhibits

- A-1 Legal Description of Property
- A-2 Preliminary Site Plan
- A-3 Preliminary Vesting Tentative Map Proposal
- B Form of Memorandum of Owner Participation Agreement
- C Form of Certificate of Completion
- D Form of Regulatory Agreement
- E Development and Phasing Plan
- F Eligible Costs
- G Conceptual Flow Diagram of Financing

TABLE OF CONTENTS

ARTICLE I OVERVIEW AND DEFINITIONS2

 1.1. Definitions.....2

 1.2. Overview.....4

ARTICLE II REPRESENTATIONS; EFFECTIVE DATE5

 2.1. Developer's Representations5

 2.2. Agency Representations.....5

 2.3. Effective Date; Memorandum.....6

ARTICLE III DEVELOPMENT OF THE PROJECT6

 3.1. The Property.....6

 3.2. Scope of Development.....6

 3.3. Restricted Units.....7

 3.4. Project Land Use and Building Approvals7

 3.5. Fees8

 3.6. Development Phasing8

 3.7. Cost of Acquisition and Construction.....9

 3.8. Rights of Access9

 3.9. Agency Disclaimer.....9

 3.10. Construction Plans9

 3.11. Construction Pursuant to Plans10

 3.12. Change in Construction Plans10

 3.13. Defects in Plans.....10

 3.14. Certificate of Completion for Project11

 3.15. Equal Opportunity.....11

 3.16. Prevailing Wage Requirements.....11

 3.17. Compliance with Laws12

 3.18. Relocation12

 3.19. Point of Sale and/or Use12

 3.20. Liens and Stop Notices Related to Public Improvements.....13

 3.21. Performance and Payment Bond(s) for Public Improvements13

 3.22. Insurance Requirements.....13

 3.23. Grocery Store Covenant.....13

ARTICLE IV AGENCY FINANCIAL ASSISTANCE AND PAYMENTS.....13

 4.1. Overview of Agency Financial Assistance and Payments to Developer13

 4.2. Use of Tax Increment By Agency14

 4.3. Timing Limitation of Assistance17

 4.4. Example of Provision of Agency Financial Assistance After a Given
 Construction Phase.....17

 4.5. General Conditions to Disbursement of Tax Increment19

4.6. No Obligation to Disburse Proceeds Upon Breach.....20

ARTICLE V USE OF THE PROPERTY20

5.1. Use; Restricted Units20

5.2. Maintenance21

5.3. Taxes and Assessments.....21

5.4. Obligation to Refrain from Discrimination.....21

ARTICLE VI RESTRICTIONS ON TRANSFER, ENCUMBRANCE22

6.1. Change Pursuant to this Agreement.....22

6.2. Prohibition on Transfer23

6.3. Permitted Transfers.....23

6.4. Requirements for Proposed Transfers.....23

6.5. Effect of Transfer without Agency Consent24

6.6. Recovery of Agency Costs.....24

ARTICLE VII SECURITY FINANCING AND RIGHTS OF MORTGAGEES24

7.1. No Encumbrances Except for Development Purposes24

7.2. Holder Not Obligated to Construct.....25

7.3. Notice of Default and Right to Cure25

7.4. Failure of Holder to Complete Improvements25

7.5. Intentionally Omitted26

7.6. Holder to be Notified26

7.7. Modifications to Agreement26

7.8. Estoppel Certificates26

ARTICLE VIII ENVIRONMENTAL MATTERS26

8.1. No Agency Liability26

8.2. Environmental Indemnification26

8.3. Hazardous Materials27

8.4. Environmental Laws27

ARTICLE IX DEFAULTS, REMEDIES AND TERMINATION.....28

9.1. Developer’s Default28

9.2. Agency Default30

9.3. Agency’s Right to Terminate Agreement30

9.4. Developer’s Right to Terminate Agreement.....30

9.5. Remedies.....30

9.6. Inaction Not a Waiver of Default.....30

9.7. Benefits Survive Termination31

ARTICLE X INDEMNITY AND INSURANCE.....31

 10.1. Indemnity31

 10.2. Liability and Workers Compensation Insurance.....31

ARTICLE XI MISCELLANEOUS PROVISIONS.....33

 11.1. No Brokers33

 11.2. Enforced Delay; Extension of Times of Performance33

 11.3. Notices33

 11.4. Attorneys’ Fees34

 11.5. Waivers; Modification34

 11.6. Binding on Successors34

 11.7. Survival.....35

 11.8. Construction.....35

 11.9. Action or Approval35

 11.10. Entire Agreement/Amendment35

 11.11. Counterparts35

 11.12. Severability35

 11.13. No Third Party Beneficiaries35

 11.14. Parties Not Co-Venturers.....35

 11.15. Non-Liability of Officials, Employees and Agents36

 11.16. Time of the Essence; Calculation of Time Periods.....36

 11.17. Governing Law; Venue.....36

 11.18. General Indemnification36

RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE 1

AGREEMENT2

THIS OWNER PARTICIPATION AGREEMENT (this “**Agreement**”) is entered into effective as of August 3, 2010 (“**Effective Date**”) by and between the Redevelopment Agency of the City of Milpitas, a public agency (“**Agency**”) and Integral Communities McCandless, LLC, a California limited liability company (“**Developer**”). Agency and Developer are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*), the Agency has responsibility to implement the redevelopment plan adopted by the City Council of the City of Milpitas, California (the “**City**”) by Ordinance No. 192 on September 21, 1976, (as subsequently amended, the “**Redevelopment Plan**”) for the Project Area No. 1 Project Area (the “**Project Area**”).

B. Developer has the contractual right to purchase the real property located in the City known as Santa Clara County Assessor’s Parcel Nos. 086-33-092 through -095, 086-33-098 through -099 and 086-33-101, and more particularly described in Exhibit A-1 attached hereto (the “**Property**”). The Property is located within the Project Area. Developer has proposed to develop a phased mixed used residential and commercial project consisting of 1,328 rental residential units and a minimum of 92,000 square feet of retail space (including mezzanine space in an amount subject to Agency approval (which approval shall not be unreasonably withheld, conditioned or delayed)) and which space includes grocery store space between 30,000 and 45,000 square feet, together with parking, open space and other amenities (hereinafter the “**Project**”).

C. Fifteen percent (15%) of the total residential units (199 residential units if all 1,328 residential units are constructed) shall be rented as affordable housing units (collectively, the “**Restricted Units**”) to moderate income persons, families and households as more particularly described herein and in the Regulatory Agreement (as hereinafter defined) to be recorded against the Property.

D. The Project shall be subject to the Developer’s application to the City of Milpitas (the “**City**”) for a Tentative Map pursuant to the Subdivision Map Act, Government Code §§ 66410, *et seq.* (the “**Map Act**”) and approval of a site plan and other materials in support of any necessary site development permits and approvals. For illustrative purposes, the Project is depicted in a Preliminary Site Plan which is attached hereto as Exhibit A-2 and the Illustrative Vesting Tentative Map attached hereto as Exhibit A-3; provided, however, that any final map or maps adopted with respect to the Project shall be consistent with the programmatic terms described in this Agreement and Transit Area Specific Plan.

E. The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the development of the Property as more particularly set forth herein. The Agency has determined that development of the Property pursuant to this Agreement is consistent with the Redevelopment Plan and the Implementation Plan for the Project Area, will be of benefit to

the Project Area, and will further the goals of the Redevelopment Plan by alleviating blight and providing affordable housing in the Project Area.

F. In providing for the actions and obligations listed herein, including the provision of financial and other types of assistance to the Developer by the Agency, the Agency has determined that the Agreement shall: (1) accelerate the development of the Project Area; (2) reduce uncertainties in planning and provide for the orderly rehabilitation and development of the Property; (3) reduce physical blighting influences within the Project Area; and (4) provide for the reimbursement to the Developer of certain costs, thereby making development of the Property economically feasible and achieve the Agency's goals for redevelopment of the Project Area. The Agency further determines that: (a) the buildings, facilities, structures and other improvements that make up the Project are of benefit to the Project Area and the Transit Area Specific Plan; (b) other than the provision of Tax Increment (as defined below), no reasonable means of financing those costs of the Project buildings, facilities, structures, and other improvements provided for herein are available to the community, given the troubled state of credit markets, the size and scale of the Project, and the Project's development timelines; and (c) the payment of public Agency funds for the cost of buildings, facilities, structures, and other improvements herein shall eliminate blight and provide housing for moderate income persons, in conformity with the Redevelopment Plan.

G. A material inducement to Agency to enter into this Agreement is (a) the agreement by Developer to develop some or all of the Property once acquired within the time sequences specified herein and (b) development of a grocery store tenant space and the recruitment of a mutually acceptable grocery store operator that provides retail grocery services to the public, all in accordance with the other provisions hereof. The Agency would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to complete the Project in accordance with such provisions.

H. Through this Agreement, Agency has indebted itself to the payment of monetary obligations, subject to the terms and conditions contained herein, and such debt, whether funded, unfunded, assumed or otherwise, may be considered a debt of Agency for purposes of issuing Statements of Indebtedness and Reconciliation Statements pursuant to California Health and Safety Code § 33675.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

OVERVIEW AND DEFINITIONS

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

- (a) **“Affordable Rent”** shall mean “affordable housing cost” as that term is defined and applied under California Health and Safety Code § 50052.5 and the implementing regulations contained in Title 25 Cal. Code Regs. § 6910, *et seq.*, to renter-occupied housing for Moderate Income Households and as further defined in Section 3.3 and Exhibit D.
- (b) **“Agency Documents”** is defined in Section 4.5.
- (c) **“Agency Event of Default”** is defined in Section 9.2.
- (d) **“Agency Financial Assistance”** is defined in Section 4.1(b).
- (e) **“Base Public Improvement Assistance”** is defined in Section 4.1(c).
- (f) **“Certificate of Completion”** is defined in Section 3.14.
- (g) **“Claims”** is defined in Section 3.16.
- (h) **“Conditions of Approval”** is defined in Section 3.2.
- (i) **“Construction Plans”** is defined in Section 3.10.
- (j) **“Developer Event of Default”** is defined in Section 9.1.
- (k) **“Development Agreement”** means that certain Development Agreement by and between the City and the Developer with respect to the Property.
- (l) **“Development and Phasing Plan”** is defined in Section 3.10 and attached hereto as Exhibit E.
- (m) **“Eligible Costs”** are those Agency, City and Developer costs that are subject to reimbursement from Tax Increment generated by the Project. Categories of expenses that constitute Eligible Costs are set forth in greater detail in Article IV and Exhibit F.
- (n) **“Eligible Households”** is defined in the Regulatory Agreement.
- (o) **“Environmental Laws”** is defined in Section 8.4.
- (p) **“Grocery Store Covenant Payments”** is defined in Section 4.2(a).
- (q) **“Hazardous Materials”** is defined in Section 8.3.
- (r) **“Improvements”** means both the Public and Private Improvements constructed for the Project pursuant to this Agreement and the requirements referenced herein.
- (s) **“Indemnitees”** is defined in Section 3.16.
- (t) **“Moderate Income”** is defined in the Regulatory Agreement.
- (u) **“Official Records”** is defined in Section 2.3.
- (v) **“Prevailing Wage Laws”** is defined in Section 3.16.
- (w) **“Private Improvements”** means the on-site, privately owned and maintained residential units, retail space, parking facilities and other structures on the Property.
- (x) **“Project”** is defined in the Recitals and further described in Section 3.2.
- (y) **“Property”** is defined in Recital B.
- (z) **“Public Improvements”** means the elements of the Project to be dedicated to the City, consisting primarily of certain public streets, sidewalks, and other features described in greater detail in Exhibit E, the Conditions of Approval, subdivision improvement agreements, and similar documents.
- (aa) **“Regulatory Agreement”** means the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit D, or as amended with the consent of Developer, which consent shall not be unreasonably withheld, delayed or denied, to allow the use of an equity sharing program in conformity with the provisions of California Health and Safety Code Section 33334.3(f)(1)(B). Such amendment may be approved administratively by the Agency Executive Director.
- (bb) **“Relocation Laws”** is defined in Section 3.18.
- (cc) **“Restricted Units”** is defined in Recital C and further defined in Section 3.3.

(dd) **“Restricted Unit Assistance”** is defined in Section 4.2(d).

(ee) **“Right of Access”** is defined in Section 3.8.

(ff) **“Tax Increment”** means the taxes paid to and received by the Agency from increased assessed valuation of taxable property pursuant to Health and Safety Code Section 33670 solely from real properties located in the Project. Notwithstanding anything to the contrary in this Agreement, the amount of Tax Increment available for disbursement shall be only those sums actually received by the Agency as described in the foregoing sentence, after all mandatory set-asides pursuant to Section 4.2(a) have been made.

(gg) **“Transfer”** is defined in Section 6.2.

1.2. Overview. The following is a general summary of the provisions of this Agreement:

(a) The Property is currently owned by Mission West Properties, L.P. II, a Delaware limited partnership. The Developer currently has the contractual right to acquire fee simple title to four parcels comprising part of the Property and a “right of first offer” with respect to the balance of the Property.

(b) As a prerequisite to receipt of the phased consideration described herein, the Developer must acquire the Property, which may be effected in phases, and construct certain public and private improvements, which, assuming all Property is acquired and developed, at a minimum shall comprise 1,328 residential units and a minimum of 92,000 square feet of retail space, (including mezzanine space) subject to the placement requirements of this Agreement and Agency approval (which approval shall not be unreasonably withheld, conditioned or delayed). Of that commercial retail space, at least 87,300 square feet shall be located at the ground level and up to 4,700 square feet can be mezzanine space subject to the approval of the City (which approval shall not be unreasonably withheld, conditioned or delayed), and a grocery store space between 30,000 and 45,000 square feet, together with parking, open space and other amenities. The aforementioned grocery store space may be reduced to a 15,000 square foot minimum sized space for specific Agency approved grocery tenants that, in the reasonable determination of the Agency Executive Director, meets or promotes the development goals for the Project Area.

(c) The Developer shall also market the grocery store space and in accordance with Section 4.2 work with the Agency to find a grocery store operator to the mutual satisfaction of the parties. The Developer shall then lease, sell or otherwise convey the grocery store tenant space to the grocery store operator and ensure its use in a manner in conformity with the restricted use covenant set forth in Section 3.23.

(d) The Developer shall develop fifteen percent (15%) of the total residential units (199 residential units assuming all 1,328 units are developed) as Restricted Units for use by moderate income persons, families and households.

(e) A grocery store shall be developed as part of the first building in the Project.

(f) To facilitate these Developer actions, the Agency shall provide Tax Increment generated solely by the Property to the Developer (including grocery store rent) up to

a maximum of Forty-One Million Three Hundred Thousand Dollars (\$41,300,000.00) as more fully described herein.

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE

2.1. Developer's Representations. Developer represents and warrants to Agency as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true in any material respect, Developer shall immediately give written notice of such fact or condition to Agency. Developer acknowledges that Agency shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of Agency.

(a) Authority. Developer is a limited liability company duly organized and in good standing under the laws of the State of California. Developer has the requisite right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The person executing this Agreement on behalf of Developer has been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer.

(b) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(c) No Litigation or Other Proceeding. To Developer's knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(d) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or insolvency proceeding.

2.2. Agency Representations. Agency represents and warrants to Developer as follows, and Agency covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true in any material respect, Agency shall immediately give written notice of such fact or condition to Developer. Agency acknowledges that Developer shall rely upon Agency's representations made herein notwithstanding any investigation made by or on behalf of Developer.

(a) Authority. Agency is a public entity duly organized and in good standing under the laws of the State of California. Agency has the requisite right, power and authority to undertake all obligations of Agency as provided herein, and the execution, performance and delivery of this Agreement by Agency have been duly authorized by all requisite actions. The

persons executing this Agreement on behalf of Agency have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Agency.

(b) No Conflict. Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, legislation or order to which Agency is a party or by which it is bound. For purposes of this representation, the Parties acknowledge that the Agency's performance of financial assistance obligations stated herein shall be subject to the restrictions and requirements of California Assembly Bill (AB) X4-26 (Committee on Budget) ("ABX4-26"), which requires this Agency and other redevelopment agencies statewide to deposit property tax increment in county "Supplemental" Educational Revenue Augmentation Funds (SERAF) to be distributed to meet the State's Proposition 98 obligations to local schools. The effects of ABX4-26 compliance requirements are set forth in greater detail in Section 4.2.

(c) No Litigation or Other Proceeding. With the exception of the suit in *California Redevelopment Association v. Genest*, Sacramento County Superior Court No. 34-80000359-CU-WM-GDS, to Agency's knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Agency to perform its obligations under this Agreement.

(d) No Bankruptcy. Agency is not the subject of a bankruptcy or insolvency proceeding.

2.3. Effective Date; Memorandum. The obligations of Developer and Agency hereunder shall be effective as of the Effective Date. Concurrently with the execution of this Agreement, the Parties shall execute a Memorandum of this Agreement substantially in the form attached hereto as Exhibit B which shall be recorded in the Official Records Santa Clara ("**Official Records**") on the date that Developer acquires any portion of the Property with respect to that portion.

ARTICLE III

DEVELOPMENT OF THE PROJECT

3.1. The Property. Developer represents and warrants that as of the Effective Date: (i) Developer possesses or has the contractual right to acquire fee simple title to four parcels of the Property and a "right of first offer" on the remainder of the Property, and (ii) to the best knowledge of Developer after reasonable inquiry, the Property is subject to no covenant, condition, restriction or agreement that would prevent the construction of the Project on the Property in accordance with this Agreement. If at any time the foregoing statements become untrue, the Agency shall have the right to terminate this Agreement upon written notice to Developer.

3.2. Scope of Development. Developer shall design, develop and construct a mixed-use Project on the Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City

or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”).

When the Developer acquires all of the Property, it intends to develop the **Project** with a minimum of 1,328 residential units, as generally set forth in the Preliminary Site Plan which is attached hereto Exhibit A-2 and the Illustrative Vesting Tentative Map, attached hereto as Exhibit A-3. The Developer intends to develop 902 residential units on the first four parcels it acquires. Restricted Units shall be developed according to the terms and conditions set forth in Section 3.3 and the Regulatory Agreement, which the Parties shall execute concurrently with the execution of this Agreement and which shall be recorded in the Official Records on the date that Developer acquires any parcel of the Property with respect to such parcel. By executing the Regulatory Agreement, the Parties intend to allow for the possible use of Restricted Units as rental units or ownership units. In conjunction with the aforementioned residential units, the Developer shall also develop a minimum of 92,000 square feet of retail space within the first two phases of development. Of that commercial retail space, at least 87,300 square feet shall be located at the ground level and up to 4,700 square feet can be mezzanine space to the approval of the City (which approval shall not be unreasonably withheld, conditioned or delayed), and a grocery store space between 30,000 and 45,000 square feet, together with parking, open space and other amenities. Developer and Agency shall work together to find a grocery store operator reasonably acceptable to Agency and Developer. Said grocery store space may be reduced to a 15,000 square foot minimum sized space for specific Agency approved grocery tenants that, in the reasonable determination of the Agency Executive Director, meet or promote the development goals for the Project Area. All such retail space and other amenities shall be in accordance with the approved Construction Plans, as set forth in this Article III.

3.3. Restricted Units. Developer covenants and agrees for itself, its successors and assigns that 15% of the residential units developed within the Project (the “**Restricted Units**”) will be rented at an Affordable Rent to households of moderate-income (if the units are rental units) or sold to households of Moderate Income (if for sale units) in accordance with the terms herein and the Regulatory Agreement. Moderate Income shall be defined in the applicable Regulatory Agreement.

Since the parties agree that the Developer, at the time of the execution of this Agreement, cannot specify the location of the particular units that shall be restricted to Moderate Income households, the Developer shall instead hereby covenant and pledge that Restricted Units shall be fairly evenly disbursed throughout the Project, of the same general quality as market units, and shall be developed to the satisfaction and approval of the Agency. Further restrictions and obligations shall be as set forth in the Regulatory Agreement.

3.4. Project Land Use and Building Approvals. Developer acknowledges and agrees that execution of this Agreement by Agency does not constitute approval for the purpose of the issuance of zoning and land use approvals and building permits for the construction of the

Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to obtain all necessary entitlements, approvals, and permits for the construction of the Project, including without limitation, the approval of architectural plans, the processing of vesting tentative map applications, the approval of any required site development and conditional use permits, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review of the Project pursuant to California Environmental Quality Act. The parties acknowledge that the Developer is negotiating a development agreement with the City that in concept shall (i) defer the payment of Transit Area Development Impact Fees, Sewer Connection Fees, Water Connection Fees, and Building Permit Fees to immediately prior to any occupancy of any building or structure, or portion thereof, within the Property and (ii) set forth the respective rates, or the methodology for determining the respective rates, of such fees.

Developer covenants that it shall: (i) obtain all necessary permits and approvals which may be required by Agency, City, or any other governmental agency having jurisdiction over the construction of the Project or the development of the Property, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures imposed in connection with any environmental review of the Project, and (iv) not commence construction of any phase or building in the Project prior to issuance of building permits for such phase and building.

Developer further acknowledges that the site plan and vesting tentative map proposals submitted as Exhibits A-2 and A-3 to this Agreement are for illustrative purposes only and do not bind the City in any manner to the ultimate review and consideration of the Developer's site plan and map submissions.

3.5. Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees, including project account deposits, and other charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project or the development of the Property, unless modified by a development agreement between the City and the Developer. Notwithstanding the above, certain fees may be deferred as described in Section 3.4 and reimbursed in accordance with Article IV, or payment deferred in accordance with a development agreement between the City and Developer.

3.6. Development Phasing. Developer shall commence and complete construction of the Project and shall satisfy all other obligations of Developer under this Agreement within the time periods set forth in Exhibit E, as such time periods may be extended upon the mutual written consent of the Parties and documented in a revised Exhibit E, which may be approved administratively by the Agency Executive Director or his or her designee. In particular, Developer shall diligently prosecute the Project as set forth below. Except as otherwise set forth herein, if Developer fails to commence or complete construction of the Project in accordance with the foregoing, Agency shall have the right, at its option, to terminate this Agreement. Termination of this Agreement by Agency shall not affect the right of Developer to receive any amounts addressed in this Agreement related to improvements the construction of which has occurred or commenced.

(a) A grocery store space shall be completed as part of the allotted retail space and be completed as part of the first phase of construction, as set forth in Exhibit E. Said grocery store space shall be between 30,000 and 45,000 square feet (including approved mezzanine space), but may be reduced to a 15,000 square foot minimum sized space for specific Agency approved grocery tenants that, in the reasonable determination of the Agency Executive Director, meet or promote the development goals for the Project Area. Developer and Agency shall work together to find a grocery store operator reasonably acceptable to Agency and Developer, to which Developer shall lease, sell or otherwise convey the grocery store space.

(b) Regardless of how overall construction of the Project is phased, the following four (4) buildings, as set forth in Exhibit E, shall be completed by August 3, 2020, as such date may be extended by force majeure events as set forth in Section 11.2 of this Agreement: (a) Building 1 on Lot 1; (b) Building 3 on Lot 3; (c) Building 2 on Lot 2; and Building 4 on Lot 4.

3.7. Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all of Developer's direct and indirect cost and expenses incurred in connection with the acquisition of the Property, including, without limitation, appraisal fees, title reports, environmental assessments, and feasibility studies. Except as expressly set forth herein, all costs of designing, developing and constructing the Improvements and the Project and compliance with the Conditions of Approval, including without limitation any off-site or on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of the Agency.

3.8. Rights of Access. For the purpose of ensuring that the Project is developed in compliance with this Agreement, Developer shall permit representatives of the Agency and the City to enter upon the Property to inspect the Project following 24-hours written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided). This "**Right of Access**" is in addition to, and not a limitation upon, any access right held by any City inspector attendant to his normal duties.

3.9. Agency Disclaimer. Developer acknowledges that the Agency and City are under no obligation, and neither Agency nor City undertakes or assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the Agency or the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the Agency or the City as to the quality of the design or construction of the Private Improvements constructed on the Property or otherwise.

3.10. Construction Plans. Developer shall submit to City's Building Department detailed construction plans for the Project (the "**Construction Plans**"). As used herein "**Construction Plans**" mean all construction documents upon which Developer and Developer's

contractors shall rely in building the Project and developing the Property (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall also be consistent with the **Development and Phasing Plan**, attached hereto as Exhibit E. The Construction Plans shall be based upon the development approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of Agency and City. Provided that the Construction Plans are consistent with the requirements of this Agreement, approval of the Construction Plans by City shall be deemed approved thereof by Agency.

3.11. Construction Pursuant to Plans. Developer shall construct the Project substantially in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City and/or the Agency pertaining to development of the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

3.12. Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the Agency and City for their written approval, which approval shall not be unreasonably withheld, conditioned or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement, any Development Agreement between the City and the Developer, and any plans or development approvals issued by Agency or City after the Effective Date.

Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved by Agency and City, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans.

Changes to the Construction Plans arising from approved changes to Project phasing may be incorporated through ministerial action by Agency staff into this Agreement without further consideration or adoption by the Board of Directors of the Agency, subject to their compliances with the provisions of this Agreement.

3.13. Defects in Plans. Neither Agency nor City shall be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel reasonably approved by Agency, which approval shall not be unreasonably withheld, conditioned or delayed) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's

indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that Agency and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency of any of the insurance policies described in this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

3.14. Certificate of Completion for Project. Promptly after completion of construction of each building in accordance with the provisions of this Agreement and the Regulatory Agreement and upon issuance of a Certificate of Occupancy by the City for a building and written request of Developer, the Agency will provide an instrument ("**Certificate of Completion**") so certifying, provided that at the time such certificate is requested all components of such building have been completed. Such Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the development of the phase.

The Certificate of Completion shall be issued substantially in the form attached hereto as Exhibit C, and at Developer's option, shall be recorded in the Official Records with respect to the legal lots on which such buildings have been completed. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement, including without limitation, Developer's obligations pursuant to the Regulatory Agreement.

3.15. Equal Opportunity. During the construction of the Project, there shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

3.16. Prevailing Wage Requirements. The parties hereto agree that Developer, contractors and agents shall pay prevailing wages on all Project construction. Developer and its contractors and agents shall comply with all applicable federal and state labor laws and standards, including California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (collectively referred to herein as the "**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. Developer shall indemnify, defend (with counsel reasonably approved by Agency) and hold the Agency, the City, and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement

of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims.

For the purposes of this Section, the term construction of the Project shall include all improvement activities that may constitute "construction" under Labor Code Section 1720 *et seq.* The Developer shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 *et seq.*

The provisions of this Section 3.16 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project.

3.17. Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code, the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

3.18. Relocation. Developer shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled in accordance with California Relocation Assistance Law (Government Code Section 7260 *et seq.*), all state and local regulations implementing such law, and all other applicable local, state and federal laws and regulations (collectively "**Relocation Laws**") relating to the displacement and relocation of eligible persons and business entities as defined in such Relocation Laws. Any and all costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expense, and payments for temporary and permanent relocation benefits pursuant to Relocation Laws shall be paid by Developer. Developer shall indemnify, defend (with counsel reasonably approved by Agency) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Developer's obligations set forth in this Section 3.18.

3.19. Point of Sale and/or Use. Developer shall use commercially reasonable efforts to require its general contractor and all subcontractors to obtain a State Board of Equalization permit or other documentation for the jobsite and allocate all eligible use tax payments to the City of Milpitas. Developer shall require the general contractor and all subcontractors to provide the Agency with a copy of said permit or documentation in order to ensure that the City of Milpitas is the point of sale and/or use under the Bradley Burns Uniform Local Sales and use Tax Law (California Revenue and Taxation Code § 7200 *et seq.*).

3.20. Liens and Stop Notices Related to Public Improvements. During construction of the Project, Developer shall take such steps as are necessary to keep the portions of the Project dedicated to Public Improvements free of liens or other encumbrances that may arise in connection with Developer's possession of the Property and construction of such Public Improvements. If a lien or other encumbrance nevertheless attaches to the Public Improvements or the land underlying them, the Agency may require Developer to take such steps as the Agency determines are reasonably necessary to protect against such lien or encumbrance including, without limitation, requiring Developer to provide the Agency with a bond, letter of credit or other form of security, in an amount equal to one hundred ten percent (110%) of the amount of the lien or encumbrance.

3.21. Performance and Payment Bond(s) for Public Improvements. Prior to commencement of construction of the Project, Developer shall deliver to the Agency copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Public Improvements. The bonds shall name the Agency and the City as co-obligees.

(a) In lieu of such performance and payment bonds, Developer or its contractors may submit evidence satisfactory to the Agency of the Developer's ability to commence and complete construction of the Public Improvements in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Agency required for any withdrawal, or a completion guaranty in a form and from a guarantor reasonably acceptable to Agency. Such evidence must be submitted in approvable form in sufficient time to allow the Agency to review and approve the information within prior to the scheduled construction start date.

3.22. Insurance Requirements. Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X

3.23. Grocery Store Covenant. Developer covenants and agrees for itself, its successors and assigns, and any successor-in-interest to the Property or part thereof owned by Developer, that Developer shall restrict and ensure the use of between 30,000 and 45,000 square feet of the first parcel developed of the Property for grocery store uses. This use restriction may be reduced to a 15,000 square foot minimum sized space for specific Agency approved grocery tenants that, in the reasonable determination of the Agency Executive Director, meets or promotes the development goals for the Project Area.

ARTICLE IV

AGENCY FINANCIAL ASSISTANCE AND PAYMENTS

4.1. Overview of Agency Financial Assistance and Payments to Developer.

(a) Notwithstanding anything to the contrary in this Agreement, Developer shall have the right to elect whether to (i) accept the Agency Financial Assistance (as defined

below) set forth in this Article IV or (ii) terminate this Agreement; provided, however, that Developer shall provide written notice of such election to the Agency at least ten (10) days prior to the issuance to Developer of the first building permit for construction by or on behalf of Developer of any physical improvements to the Property or of any onsite or offsite improvements associated with the development of the Property. All terms and conditions of the Agency Financial Assistance under this Agreement shall be subject to this Section 4.1.

(b) The Agency shall provide or cause the provision of public financial support and payments necessary to effect the development of the Property, in accordance with the goals and requirement of the Redevelopment Plan (“**Agency Financial Assistance**”). Such Agency Financial Assistance shall be contingent upon the satisfaction of the terms and conditions stated in this Article IV and elsewhere in this Agreement.

(c) The general overview of the nature of Agency Financial Assistance is as follows. Agency shall provide a maximum of Forty One Million Three Hundred Thousand Dollars (\$41,300,000) in Agency Financial Assistance with respect to the Project. The “**Base Public Improvement Assistance**” shall be up to Twenty Nine Million One Hundred Fifty-Three Thousand Six Hundred Seventy-Two Dollars and Fifty-Three Cents (\$29,153,672.53) for Eligible Costs, the Restricted Unit Assistance shall be up to Five Million Eight Hundred Forty-Six Thousand Three Hundred Twenty-Seven Dollars and Forty-Seven Cents (\$5,846,327.47), and the “**Grocery Store Covenant Payments**” shall be Six Million Three Hundred Thousand Dollars (\$6,300,000).

i. Cost reimbursements may occur only after the completion of each building and shall be limited in size by the amount of Tax Increment cumulatively generated by the

ii. Project and the total verified amount actually received by the Agency from such Tax Increment.

iii. Nothing in this Agreement shall require that tax allocation or Mello-Roos bonds be issued by the Agency as Agency Financial Assistance.

iv. Costs eligible for Base Public Improvement Assistance (“**Eligible Costs**”) shall be used as set forth below and further specification of the nature and amounts of Eligible Costs are set forth in Exhibit F.

(d) All Grocery Store Covenant Payments shall be provided as set forth in Section 4.2(a).

(e) An overview diagram of the financing program is attached hereto as Exhibit G, Conceptual Flow Diagram of Financing.

4.2. Use of Tax Increment By Agency Grocery Store Covenant Payments. In consideration of the restrictive use covenant set forth in Section 3.23, the Agency shall make phased payments to the Developer subject to and contingent upon satisfaction of the conditions set forth below (the “**Grocery Store Covenant Payments**”).

i. The Grocery Store Covenant Payments shall not exceed the maximum annual amount of Six Hundred Thousand Dollars (\$630,000) from the Agency or a cumulative amount over a ten year period (which may extend over 11 fiscal years) of Six Million Three Hundred Thousand Dollars (\$6,300,000). Such Grocery Store Covenant Payments shall be made at most twice a year from the funds required to be set aside for such payments in subparagraph iii below, subject to such funds' availability and receipt by the Agency.

ii. The Grocery Store Covenant Payments shall begin to be computed in the first full fiscal year after the issuance of a final certificate of occupancy and the commencement of retail operations to the public of the grocery store space by a grocery store operator, whichever is later. Grocery Store Covenant Payments shall be payable in arrears, but cover only those periods of which there is compliance with the Grocery Store Covenant set forth in Section 3.23 and actual open to the public retail operation of the grocery store space, not just occupancy by a tenant (i.e., no Grocery Store Covenant Payment for mere occupancy of grocery store space during any period when such store is not open for business for consumer purchases).

iii. Grocery Store Covenant Payments shall be the first priority for the payment of Agency Financial Assistance and shall be annually set aside and accrued for use as Grocery Store Covenant Payments. Such Agency payments shall also be contingent upon the availability of Tax Increment that is generated by the Project, and all available Tax Increment (as defined herein) shall be applied first against the amounts set aside for Grocery Store Covenant Payments.

iv. The Grocery Store Covenant Payments shall be available for a period of ten full years starting from the date of the start of retail operations to the public, but may be payable over 11 fiscal years, depending on the start date and the timing and collection of supplemental tax bills, and the timing of operation of such grocery store during the fiscal—rather than calendar—year.

v. The Grocery Store Covenant Payments shall be prorated to the actual time of retail operations to the public in the preceding fiscal year. Thus, to the extent any retail operations or any right of the grocery store operator to use the grocery store space is suspended, subject to an automatic stay during a bankruptcy, or use is otherwise terminated by bankruptcy, or any other cause, no Grocery Store Covenant Payment shall be owed by the Agency.

(b) Base Public Improvement Assistance Calculation. The amount payable in Base Public Improvement Assistance at any specific time shall equal the percentage of total residential units completed divided by 1,328. For example, if a building contained 350 units the Developer would be entitled to receive 26.35% of the Base Public Improvement Assistance (350/1328), and when 700 residential units were completed the Developer would be entitled to 52.71%. Notwithstanding the foregoing, no Base Public Improvement Assistance will be provided:

- i. Until the Grocery Store Covenant Payments described in Section 4.2(a) has been paid or set aside;
- ii. The Developer has submitted the documentation required under Exhibit F-2; and
- iii. Sufficient Tax Increment has been generated by the Project to make a payment hereunder.

(c) Base Public Improvement Assistance. Provided the provisions of Section 4.1 above have been met and the payment required under 4.1(b) paid or accrued, Base Public Improvement Assistance shall be used for the construction (directly or indirectly) of off-site infrastructure as set forth in subparagraph (i) and (ii) below and the provision of Restricted Units as set forth in Section 4.2(d) below.

i. The Developer may submit a request for payment in accordance with Exhibit F-2, for reimbursement of the cost of installing public infrastructure for which it has not received a fee credit or other public subsidy (if applicable). Such Eligible Costs shall be paid upon demonstration to the Agency's reasonable satisfaction that such Eligible Costs have been incurred or paid, and the receipt of the appropriate documentation as required by Exhibit F-2.

ii. The Developer may submit a request for payment for the reimbursement of the following percentage of any development fee paid where the percentage of such fee set forth below is used to construct or dedicated to the construction of public infrastructure.

- A. Transit Area Development Impact Fee (97%);
- B. Sewer Connection Fee (95%)
- C. Water Connection Fee (95%)
- D. Storm Drainage Fee (95%)
- E. Milpitas Unified School District (95%)

(d) Restricted Unit Assistance. If Tax Increment is available after the payment or set-aside (as applicable) of Grocery Store Covenant Payments set forth in Section 4.2(a) has been made, the Agency agrees to assist in the Project by partially funding the costs of providing Restricted Units as set forth in this Section (d). A maximum of Five Million Eight Hundred Forty-Six Thousand Three Hundred Twenty-Seven Dollars and Forty-Seven Cents (\$5,846,327.47), or \$29,378.53 per Restricted Unit ("**Restricted Unit Assistance**") shall be payable to Developer for the construction of Restricted Units. Payment made to construct Restricted Units shall be provided first out of the Low and Moderate Income Housing Fund administered by the Agency pursuant to California Health and Safety Code Section 33334.3 for the purpose of increasing the supply of affordable housing within the City of Milpitas and more particularly in the Project Area. In consideration for receipt of these funds, Developer shall

record against the Restricted Units the affordable housing restrictions and covenants set forth in the Regulatory Agreement prior to the receipt of a Certificate of Completion for such building.

(e) Agency's obligations under this Section 4.2 shall be subordinate to any statutory or administrative "takes" of Tax Increment by the State of California and the pledge of any Tax Increment that the Agency has made in connection with any outstanding Agency bonds or other debt existing as of the date of this Agreement, including debt or advances by the Agency to the City. Agency's obligations under this Section 4.2 shall also be subordinate to any future pledge of Tax Increment in connection with issuance of new bonds, debts or advances, provided that the Agency determines to Developer's reasonable satisfaction that it will have sufficient Tax Increment to pay any previously incurred debt (other than debt owing to the City and incurred prior to the date of this Agreement).

(f) For the purposes of this Section 4.2, any outstanding Agency bonds or other debt that the Agency issues after the date of this Agreement shall be considered bonds or other debt as of the date of this Agreement if the proceeds of such new bonds or other debt are used to refund or repay previously issued bonds or other debt.

4.3. Timing Limitation of Assistance. All assistance limited herein shall cease twenty-four (24) years from the first certificate of occupancy issued for the Project. Notwithstanding the foregoing, if the full amount of the Agency Financial Assistance set forth in 4.2 has been earned by Developer but not paid to Developer, due to state reallocation or any other reallocation of Agency funds, the term of this Agreement shall be extended as necessary until such Agency Financial Assistance has been paid to Developer; provided, however, that the period of such extension shall not exceed four (4) years.

4.4. Example of Provision of Agency Financial Assistance After a Given Construction Phase. For illustrative purposes only, the following is an example of the provision of Agency Financial Assistance in Years One and Two.

(a) Year One of Eligible Payments.

i. After the completion of the first phase of construction of the Project and the placement of assessed value onto the property tax roll of the Santa Clara County Tax Collector's Office, the Developer may issue a reimbursement request to the Agency for reimbursement of Eligible Costs. Notwithstanding the reimbursement request, such Eligible Costs will not actually be reimbursed until Tax Increment is received by the Agency and distributable in accordance with the following subparagraphs.

ii. The Agency shall first calculate the amount of available Tax Increment in Year One. The City shall then use such Tax Increment to disburse, to the extent available, the Grocery Store Covenant Payments as directed by the Developer in an amount not to exceed Six Hundred Thirty Thousand Dollars (\$630,000). Such amount shall be deducted from the Six Million Three Hundred Thousand Dollars (\$6,300,000) in total possible Grocery Store Covenant Payments and made only to the extent a grocery store has been open for public retail operations in the grocery store space in the Project in the preceding fiscal year. In the event of less than a full year of being open for public

retail operations, Grocery Store Covenant Payments shall be prorated based on the number of days in such year that the grocery store has been open for public retail operations. If such amounts have not been disbursed they will be set aside and held as set forth in Section 4.2.

iii. If any Tax Increment remains after fully funding or setting aside funds for the Grocery Store Covenant Payments, such remaining Tax Increment from Year One may be used by the Agency to reimburse remaining Eligible Costs, provided, however, that Restricted Unit Assistance shall only be payable from the Agency's Low and Moderate Income Housing Fund.

iv. If there is insufficient Tax Increment to cover reimbursements of Eligible Costs associated with the first building or buildings in the Project, the Developer shall await "pay as you go," annualized distributions of Tax Increment reimbursements for valid Eligible Costs in future years. The Agency shall determine on an annual basis the amount of available Tax Increment and issue Tax Increment reimbursements up to the available amount and not exceeding the non-allocated and unused remaining amount of the Base Public Improvement Assistance and/or Restricted Unit Assistance, as applicable.

(b) Years Two and following.

i. The Agency shall first determine the amount of Tax Increment collected from the Project in Year Two and received by the Agency from the Santa Clara County Tax Collector's Office.

ii. The Agency shall then use available Tax Increment to disburse, or set aside, as applicable, that year's Grocery Store Covenant Payments of up to Six Hundred Thirty Thousand Dollars (\$630,000) and any shortfall owed for Grocery Store Covenant Payments with respect to any preceding year(s). Such disbursement amounts shall be deducted from the Six Million Three Hundred Thousand Dollars (\$6,300,000) in total possible Grocery Store Covenant Payments and made only if and when a grocery store operator has been open for public retail operations in the grocery store space in the Project in the preceding fiscal year. In the event of less than a full year of being open for public retail operations, Grocery Store Covenant Payments shall be prorated based on the number of days in such year that the grocery store has been open for public retail operations.

iii. If any Tax Increment monies remain, the Agency shall then determine the outstanding amounts of the Developer's request to the Agency for reimbursement of Eligible Costs that have not already been reimbursed by the Agency with prior year Tax Increment payments, provided, however, that Restricted Unit Assistance shall only be payable from the Agency's Low and Moderate Income Housing Fund.

iv. The Agency shall then issue reimbursements up to the amount of available Tax Increment for such outstanding Eligible Costs. Any remaining outstanding amounts shall await future year payments from Tax Increment.

(c) The Developer understands and agrees that the Agency, in providing the above example, is making no representation or warranty as to the exact amount of Agency Financial Assistance after a particular construction phase and that the availability of Agency Financial Assistance could be reduced as a result of future events, including but not limited to Developer's actions or inactions with respect to development of the Project, future legislation that limits a reduces the amount of Tax Increment paid to the Agency or requires that Tax Increment be used for specific purposes, or natural disasters or economic downturns that result in reduction of the value of property in the area governed by the Redevelopment Plan, all of which could affect the amount of available Tax Increment.

4.5. General Conditions to Disbursement of Tax Increment. In addition to the foregoing requirements, Agency's obligation to provide payments to Developer generated by any specific phase of the development is also conditioned upon the satisfaction of all of the following general conditions:

(a) Developer's delivery to Agency of this Agreement, and with respect to each phase, the Memorandum of Owner Participation Agreement (as set forth in Exhibit B), the Regulatory Agreement, and all attachments thereto (collectively, the "**Agency Documents**"), each fully-executed and acknowledged as appropriate;

(b) Conveyance of a portion of the Property included in each phase to Developer and the recordation of the Regulatory Agreement and the Memorandum of the Owner Participation Agreement with respect to each phase in the Official Records;

(c) Developer's delivery to Agency of evidence reasonably satisfactory to Agency that Developer has obtained all necessary permits (including without limitation, building permits), licenses, and approvals required to develop such phase of the Project, or that the receipt of such permits is subject only to such conditions as Agency shall approve;

(d) Agency and City shall have approved the final plans and specifications for a building in the Project (which approval shall not be unreasonably withheld, conditioned or delayed);

(e) Developer shall have delivered to Agency evidence reasonably satisfactory to Agency that Developer has secured binding commitments, subject only to commercially reasonable conditions, for all financing necessary for the successful completion and operation of such building in the Project;

(f) Developer's delivery to the Agency of evidence of insurance coverage in accordance with the requirements set forth herein;

(g) Developer's delivery to Agency and Agency approval of all of the following: (a) Project budget for such building; (b) performance bonds or other assurance of completion reasonably acceptable to Agency pursuant to the requirements set forth herein for public improvements being constructed by the Developer on public right-of-way; (c) construction schedule for such building; and (d) copies of such other documents related to the development and financing of the Project as Agency may reasonably request;

(h) Developer's delivery to Agency of evidence reasonable satisfactory to Agency that there are no mechanics' liens or stop notices related to the public improvements, and Developer's provision to Agency of full waivers or releases of lien claims if required by Agency;

(i) Developer's delivery to Agency of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Developer is authorized to do business in the State of California and (ii) evidence that Developer has authorized this transaction and that the persons executing the Agency Documents on behalf of Developer have been duly authorized to do so;

(j) No material adverse change as determined by Agency in its reasonable judgment shall have occurred in the condition of the Property or the Improvements or in the financial or other condition of Developer since the date of this Agreement; and

(k) Evidence of Eligible Costs as set forth on Exhibit F.

4.6. No Obligation to Disburse Proceeds Upon Breach. Notwithstanding any other provision of this Agreement, the Agency shall have no obligation to disburse or authorize the disbursement of any portion of the Tax Increment following:

(a) The failure of any of Developer's representations and warranties in any material respect made in this Agreement to be true and correct in all material respects;

(b) The termination of this Agreement by mutual agreement of the Parties or in accordance with Section 9.4;

(c) The conditions to disbursement of Agency Financial Assistance set forth in this Article IV have not been satisfied, unless an extension of time or opportunity to cure is approved by Agency in writing; or

(d) The occurrence of a breach under any of the Agency Documents or the existence of any condition, event or act which upon the giving of notice or the passage of time or both would constitute Developer Event of Default under any Agency Document.

ARTICLE V

USE OF THE PROPERTY

5.1. Use; Restricted Units. Developer covenants and agrees for itself and its successors and assigns that the Property shall be used for the purposes specified in this Agreement. Except as provided otherwise in this Agreement, the conditions set forth in this Agreement shall apply until a Certificate of Completion is issued for the Project; provided however, (i) the covenants against discrimination specified in Section 5.4 of this Agreement shall be perpetual, and (ii) the covenants regarding moderate-income housing specified herein and in the Regulatory Agreement shall remain in effect for 55 years for the date of a Certificate of Occupancy for each such building subject to the terms hereof and to the terms of the Regulatory Agreement.

5.2. Maintenance. Developer or its assignee shall maintain the Project and non-public and related landscaping and common areas in accordance with the Milpitas Municipal Code in a manner consistent with community standards, and shall comply with all applicable federal, state and local laws and regulations pertaining to the Property and the Project. Developer covenants that the portions of the Property undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards. Developer or its assignee shall maintain the Project, including the walkways, driveways, and landscaping, in good repair and working order, and in a neat, clean and orderly condition, and from time to time shall make all necessary and proper repairs, renewals and replacements.

5.3. Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the portions of Property it owns and payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to such portion(s) of the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

5.4. Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, nor shall Developer or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall run with the land, be binding upon any subcontracting parties, successors, assigns and other transferees under this Agreement and shall remain in effect in perpetuity.

All deeds, leases or contracts for the sale, lease, sublease, or other transfer of the Property, or any portion thereof made or entered into by Developer, its successors or assigns, shall contain therein the following language:

(a) In Deeds:

"The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or

enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenants shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts:

"The contractor herein covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this contract is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall be binding upon any subcontracting Parties, successors, assigns and other transferees under the contract."

ARTICLE VI

RESTRICTIONS ON TRANSFER, ENCUMBRANCE

6.1. Change Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer are of particular concern to the Agency. It is because of these qualifications, experience, financial capacity and expertise that the Agency has entered into this Agreement. No voluntary or involuntary successor, assignee or

transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

6.2. Prohibition on Transfer. Developer shall not except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of Agency. Any such attempt to assign this Agreement without the Agency’s consent shall be null and void and shall confer no rights or privileges upon the purported assignee.

6.3. Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the granting of permanent easements to a public entity; (iii) the dedication of any property required pursuant to this Agreement; (iv) after the development thereof, the sale of individual parcels, residential units, retail space or a building; (v) after the development thereof, the lease of individual parcels, residential units, retail space or a building; (vi) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property subject to the requirements of Article VII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (vii) after the development thereof, the transfer to a property owners’ association; (viii) transfer to any entity in which Developer holds a controlling interest or which holds a controlling interest in Developer; or (ix) with Agency consent, which consent shall not be unreasonably withheld, conditioned or delayed. If Developer does not receive a written disapproval of a transfer pursuant to clause (x) hereof such transfer shall be deemed approved.

6.4. Requirements for Proposed Transfers. The Agency may, in the exercise of its reasonable discretion, consent to a proposed Transfer of this Agreement, the Property or a portion thereof if all of the following requirements are met (provided however, the requirements of this Section 6.4 shall not apply to Transfers described in clauses (i) through (ix) of Section 6.3):

i. The proposed transferee demonstrates to the Agency’s satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Agency to competently complete construction of the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement. Financial resources or fitness requirements may be satisfied by the pledge of performance bonds or letters of credit to the satisfaction of the Agency.

ii. The Developer and the proposed transferee shall submit for Agency review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee’s qualifications and development capacity as the Agency may reasonably request.

iii. The proposed transferee shall expressly assume all of the rights and unperformed obligations of the Developer under this Agreement and the Regulatory Agreement arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement and the Regulatory Agreement.

iv. The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Agency in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency's governing board. If a proposed Transfer has not been approved by Agency in writing within thirty (30) days following Agency's receipt of written request by Developer, it shall be deemed approved.

6.5. Effect of Transfer without Agency Consent In the absence of specific written agreement by the Agency, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement or the Regulatory Agreement.

6.5.2. Without limiting any other remedy Agency may have under this Agreement, or under law or equity, this Agreement may be terminated by Agency if without the prior written approval of the Agency, Developer assigns or Transfers this Agreement or the Property prior to the Agency's issuance of a Certificate of Completion. This Section 6.5.2 shall not apply to Transfers described in clauses (i) through (x) of Section 6.3).

6.6. Recovery of Agency Costs. Developer shall reimburse Agency for all Agency costs, including but not limited to attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten days following Agency's delivery to Developer of an invoice detailing such costs.

ARTICLE VII

SECURITY FINANCING AND RIGHTS OF MORTGAGEES

7.1. No Encumbrances Except for Development Purposes. Prior to the Agency's issuance of a Certificate of Completion for a specific phase of the Project and the sale of the Restricted Units mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon such phase or only for the purpose of securing loans or funds to be used by Developer for the construction of the Project and other expenditures reasonably necessary for acquisition and development of the Property pursuant to this Agreement. Developer shall promptly notify Agency of any mortgage, deed of trust, sale and lease-back or other financing, conveyance, encumbrance, or lien that has been or will be created or attached to any portion of the Property or the Improvements.

7.1.1. Memorandum and Regulatory Agreement to be Senior to Mortgages.

Developer covenants and agrees that the Memorandum of this Agreement and the Regulatory Agreement recorded with respect to any parcel of the Property shall be senior in priority to any mortgage, deed of trust, or other security instrument recorded against such parcel, and that if any such instrument has been recorded against such parcel prior to recordation of the Memorandum with respect to such parcel, Developer shall promptly secure execution of such subordination agreements as may be reasonably necessary to ensure that Agency's interests shall not be defeated as a result of foreclosure of any such instrument.

7.2. Holder Not Obligated to Construct. The holder of any mortgage, deed of trust or other security interest authorized by this Agreement is not obligated to construct or complete any of the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement.

7.3. Notice of Default and Right to Cure. Whenever Agency delivers any notice of default hereunder, Agency shall concurrently deliver a copy of such notice to each holder of record of any mortgage, deed of trust or other security instrument secured by the Property provided that Agency has been provided with the address for delivery of such notice. Agency shall have no liability to any such holder for any failure by the Agency to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy any such default or breach. In the event that possession of the Property (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Property within sixty (60) days after receipt of the Agency's notice, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy within sixty (60) days, or longer if commercially necessary, after taking possession. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify Agency of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer's obligations to Agency under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to Agency that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such holder properly completing the Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement and shall be entitled to a Certificate of Completion upon compliance with the requirements of this Agreement.

7.4. Failure of Holder to Complete Improvements. In any case where, after default by Developer in completion of construction of the Improvements, the holder of record of any mortgage, deed of trust, or other security interest creating a lien or encumbrance upon the Property having first exercised its option to construct, has not proceeded diligently with

construction, Agency shall be afforded those rights against such holder that it would otherwise have against Developer under this Agreement.

7.5. Intentionally Omitted Holder to be Notified. Developer, for itself, its successors and assigns hereby warrants and agrees that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged by the holder prior to its creating any security right or interest in the Property.

7.7. Modifications to Agreement. Agency shall not unreasonably withhold, condition or delay its consent to modifications of this Agreement requested by Developer's lender or lenders provided such modifications do not alter Agency's substantive rights and obligations under this Agreement.

7.8. Estoppel Certificates. Either Party shall, at any time, and from time to time, within ten (10) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE VIII

ENVIRONMENTAL MATTERS

8.1. No Agency Liability. Neither Agency nor City shall be responsible for the cost of any soil, groundwater or other environmental remediation or other response activities for any Hazardous Materials existing or occurring on the Property or any portion thereof, and Developer shall be solely responsible for all actions and costs associated with any such activities required for the development of the Project, the Property, or any portion thereof. Upon receipt of any notice regarding the presence, release or discharge of Hazardous Materials in, on or under the Property, or any portion thereof, Developer (as long as Developer owns the property which is the subject of such notice) agrees to timely initiate and diligently pursue and complete all appropriate response, remediation and removal actions for the presence, release or discharge of such Hazardous Materials within such deadlines as specified by applicable Environmental Laws.

8.2. Environmental Indemnification. Developer shall indemnify, defend (with counsel approved by Agency) and hold the Indemnitees harmless from and against any and all Claims including without limitation any expenses associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials and administrative, enforcement or judicial proceedings resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal or the alleged presence, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous

Materials Laws. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this Section 8.2 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement.

8.2.1. No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 8.2 above, are in no way limited or otherwise affected by any information the Agency or the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the Agency or the City obtained such information from the Developer or from its own investigations. It is further agreed that Agency and City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Developer, of any of the insurance policies described in this Agreement.

8.3. Hazardous Materials. As used herein, the term "**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

8.4. Environmental Laws. As used herein, the term "**Environmental Laws**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or

common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1. Developer's Default. The following events shall constitute an event of default on the part of Developer ("**Developer Event of Default**"):

- (a) After taking into account the extension of time permitted under Section 11.2, Developer fails to commence or complete construction of the Project within the times set forth in Section 3.6 after a notice and cure period, or abandons or suspends construction of the Project prior to completion of all construction for a period of sixty (60) days;
- (b) A voluntary Transfer occurs in violation of Article VI;
- (c) Developer fails to maintain insurance on the portions of the Property Developer owns and the Project as required pursuant to this Agreement and Developer fails to cure such default within ten (10) days of receipt of written notice by the Developer;
- (d) Subject to Developer's right to contest the following charges pursuant to Section 5.3, if Developer fails to pay prior to delinquency taxes or assessments due on the portions of the Property Developer owns or the Project or fails to pay when due any other charge that may result in a lien on the portions of the Property Developer owns or the Project, and

Developer fails to cure such default within 30 days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(e) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the portions of the Property Developer owns and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(f) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Agency or the City in connection with this Agreement or Developer's request for Agency Financial Assistance proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Agency or the City;

(g) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;

(h) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(i) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated other than in a reorganization in which Developer meets the transfer restrictions in Sections 6.3 or 6.4;

(j) An event of default arises under any Agency Document and remains uncured beyond any applicable cure period; or

(k) Developer defaults in the performance of any material term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for thirty (30) days in the event of a monetary default or ninety (90) days in the event of a nonmonetary default after the date upon which Agency shall have given written notice of the default to Developer.

(l) Upon Developer's default under this Agreement, the Agency shall provide written notice of the purported breach, and unless a shorter cure period is specified or in the case of a Developer Event of Default arising under clauses (b) through (i) above, Developer shall have ninety (90) days after the date upon which Agency shall have given written notice of the

default to Developer to cure such default; provided however, if the default is of a nature that it cannot be cured within 90 days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within 180 days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than 180 days after receipt of notice of the default.

9.2. Agency Default. An event of default on the part of Agency (“**Agency Event of Default**”) shall arise hereunder if Agency fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Developer to Agency, or in the case of a default which cannot with due diligence be cured within thirty (30) days, Agency fails to commence to cure the default within ninety (90) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

9.3. Agency’s Right to Terminate Agreement. If a Developer Event of Default shall occur and be continuing beyond any applicable cure period, then Agency shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If Agency makes such election, Agency shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

9.4. Developer’s Right to Terminate Agreement. Developer may terminate this Agreement by written notice to Agency (i) as set forth in Section 4.1(a) or, (ii) at any time following commencement of construction by or on behalf of Developer of any physical improvements to the Property or of any onsite or offsite improvements associated with the development of the Property, with respect to those portions of the Property construction on which has not yet commenced.

9.5. Remedies. Upon the occurrence of a Developer Event of Default or an Agency Event of Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, the non-defaulting party may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to recover damages or to obtain any other remedy consistent with the purpose of this Agreement.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party.

9.6. Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action

or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

9.7. Benefits Survive Termination. Notwithstanding Section 4.6(d), any termination of this Agreement pursuant to Article IX shall not affect or restrict the right of Developer to receive, when funds are available therefor pursuant to this Agreement, amounts then accrued or payable to Developer on account of development and improvement of any portion(s) of the Property completed by Developer prior to the date of such termination.

ARTICLE X

INDEMNITY AND INSURANCE

10.1. Indemnity. Developer shall indemnify, defend (with counsel approved by Agency) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Developer's or Developer's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or otherwise arising out of or in connection with Developer's performance under this Agreement. Developer's indemnification obligations under this Section 10.1 shall not extend to Claims resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that Agency and City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Developer, of any of the insurance policies described in this Agreement.

10.2. Liability and Workers Compensation Insurance Prior to initiating work on the Project and continuing through the issuance of the Certificate of Completion, Developer and all contractors working on behalf of Developer on the Project shall maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit, Four Million Dollars (\$4,000,000) annual aggregate, or such other policy limit as Agency may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Until issuance of the Certificate of Completion, Developer and all contractors working on behalf of Developer shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to Agency evidence satisfactory to Agency that Developer and any contractor with whom Developer has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Upon commencement of construction and continuing until issuance of a Certificate of Completion for a particular phase, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming Agency as loss payee.

(d) Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount reasonably acceptable to Agency.

(e) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name Agency and City as loss payees as their interests may appear.

(f) Prior to commencement of construction, Developer shall furnish Agency with certificates of insurance in form reasonably acceptable to Agency evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City and Agency of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(g) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Agency and City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Agency or City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse Agency or City for such expense upon receipt of billing from Agency or City.

(h) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency or City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City and Agency. Developer shall furnish the required certificates and endorsements to Agency prior to disbursement of any Agency Financial Assistance proceeds, and as applicable, no less than thirty (30) days prior to commencement of construction, and shall provide Agency with certified copies of the required insurance policies upon request of Agency.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1. No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

11.2. Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Agency which shall not excuse performance by Agency), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and Agency (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Agency). Agency and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (a) personal delivery, in which case notice is effective upon delivery;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

Agency: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

Developer: Integral Communities Milpitas, LLC
160 Newport Center Drive, Suite 240
Newport Beach, California 92660
Attn: Craig A. Manchester

11.4. Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

11.5. Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6. Binding on Successors. Subject to the restrictions on Transfers set forth in Article VI, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named party shall be deemed to apply to any permitted successor and assign of such party who has acquired an interest in compliance with this Agreement or under law.

11.7. Survival. All representations made by Developer hereunder and Developer's obligations pursuant to Sections 3.13, 3.16, 3.17, 3.18, 8.1, 8.2, 10.1, 11.1 and 11.18 shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion.

11.8. Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

11.9. Action or Approval. Whenever action and/or approval by Agency is required under this Agreement, Agency's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Executive Director determines in his or her discretion that such action or approval requires referral to Agency's Board for consideration.

11.10. Entire Agreement/Amendment. This Agreement, including Exhibits A through G attached hereto and incorporated herein by this reference, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof. This Agreement may be amended or modified only by a written instrument signed by both Parties. The parties agree in good faith to consider amendment of this Agreement and/or the Regulatory Agreement as required to permit the separate sale or conveyance of the commercial space as separate lots or units, as appropriate.

11.11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12. Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.13. No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.14. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.15. Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of Agency or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

11.16. Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a “business day” means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

11.17. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California.

11.18. General Indemnification. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless Indemnitees from all Claims (including without limitation, attorneys’ fees) arising in connection with any claim, action or proceeding to attack, set aside, void, or annul any approval by the City or the Agency or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Project or this Agreement. The Agency will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. The Agency and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if the Agency or City chooses to do so, Developer shall reimburse Agency and City for reasonable attorneys’ fees and expenses incurred.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

AGENCY

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

By:
Its: Executive Director

ATTEST:

APPROVED AS TO FORM:

Agency Counsel

DEVELOPER

INTEGRAL COMMUNITIES
MCCANDLESS, LLC,
A CALIFORNIA LIMITED LIABILITY
COMPANY

By: _____
Its: _____

Exhibit A-1

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcels 4 through 10, as shown on that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 5, 1984, in Book 536 of Maps, Pages 41, 42 and 43.

Excepting therefrom that portion of Parcel 6 of said Parcel Map conveyed to the Santa Clara County Transit District in Deed recorded March 9, 2000 as Instrument No. 15175678 of Official Records.

APN: 086-33-092,093,094,095,098,099, 101

Exhibit A-2

PRELIMINARY SITE PLAN

LEGEND

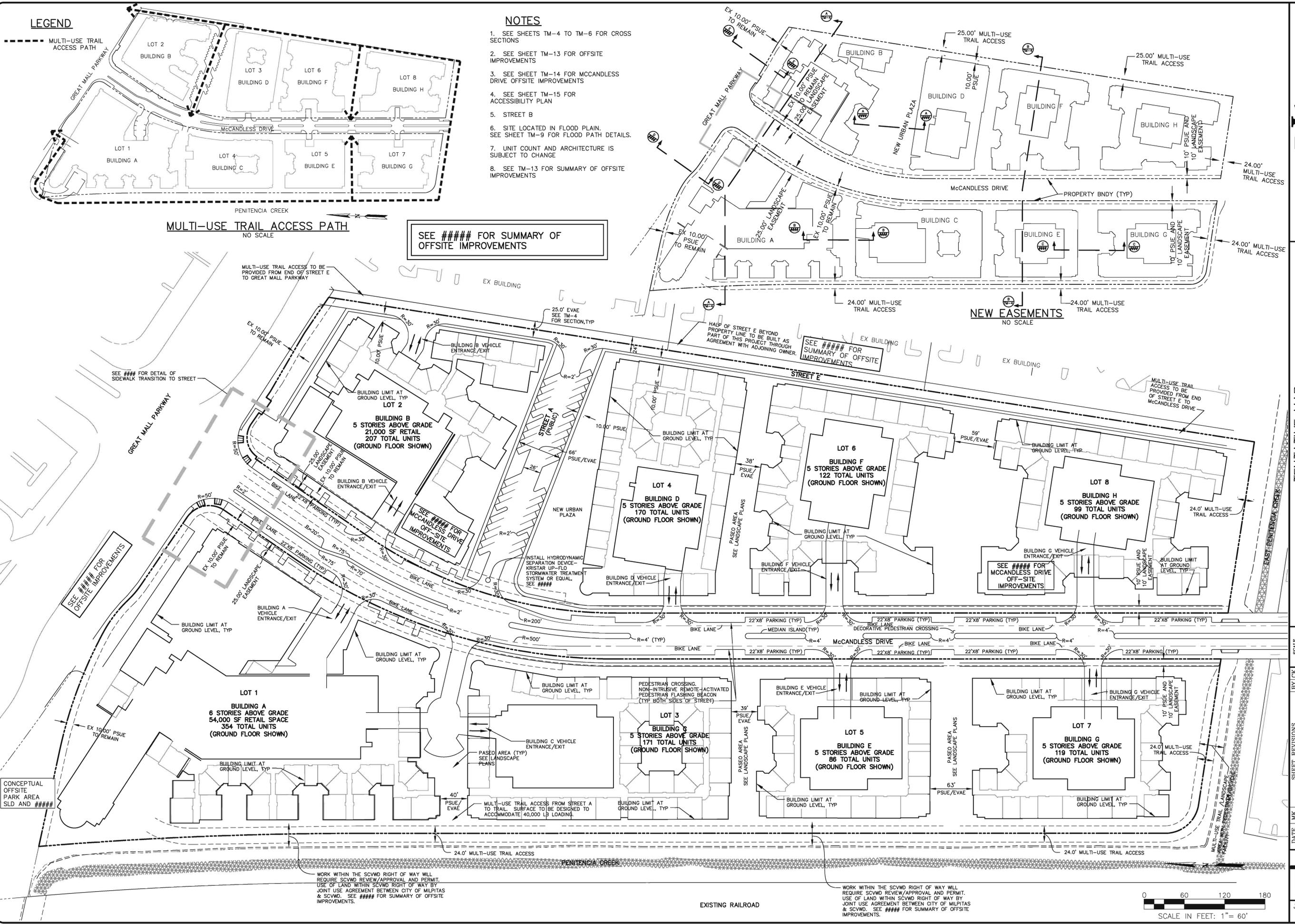
--- MULTI-USE TRAIL ACCESS PATH

MULTI-USE TRAIL ACCESS PATH
NO SCALE

SEE ##### FOR SUMMARY OF OFFSITE IMPROVEMENTS

NOTES

1. SEE SHEETS TM-4 TO TM-6 FOR CROSS SECTIONS
2. SEE SHEET TM-13 FOR OFFSITE IMPROVEMENTS
3. SEE SHEET TM-14 FOR MCCANDLESS DRIVE OFFSITE IMPROVEMENTS
4. SEE SHEET TM-15 FOR ACCESSIBILITY PLAN
5. STREET B
6. SITE LOCATED IN FLOOD PLAIN. SEE SHEET TM-9 FOR FLOOD PATH DETAILS.
7. UNIT COUNT AND ARCHITECTURE IS SUBJECT TO CHANGE
8. SEE TM-13 FOR SUMMARY OF OFFSITE IMPROVEMENTS



CONCEPTUAL OFFSITE PARK AREA SLD AND #####

WORK WITHIN THE SCVWD RIGHT OF WAY WILL REQUIRE SCVWD REVIEW/APPROVAL AND PERMIT. USE OF LAND WITHIN SCVWD RIGHT OF WAY BY JOINT USE AGREEMENT BETWEEN CITY OF MILPITAS & SCVWD. SEE ##### FOR SUMMARY OF OFFSITE IMPROVEMENTS.

WORK WITHIN THE SCVWD RIGHT OF WAY WILL REQUIRE SCVWD REVIEW/APPROVAL AND PERMIT. USE OF LAND WITHIN SCVWD RIGHT OF WAY BY JOINT USE AGREEMENT BETWEEN CITY OF MILPITAS & SCVWD. SEE ##### FOR SUMMARY OF OFFSITE IMPROVEMENTS.

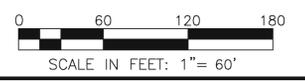


Exhibit A-3

PRELIMINARY VESTING TENTATIVE MAP PROPOSAL

McCANDLESS TENTATIVE MAP

DEVELOPERS:

INTEGRAL COMMUNITIES McCANDLESS LLC
160 NEWPORT CENTER DRIVE, SUITE 240
NEWPORT BEACH, CA 92625

CIVIL ENGINEER:

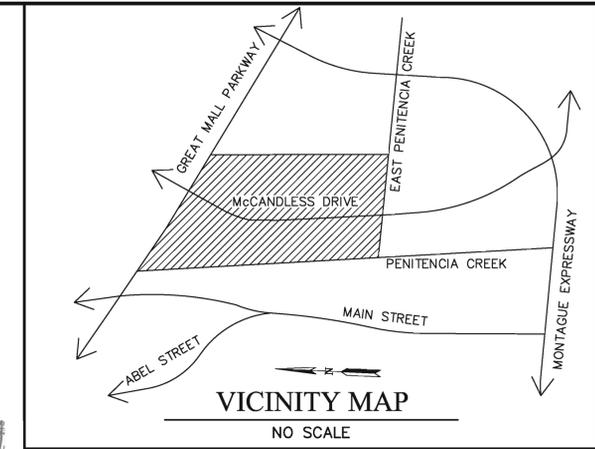
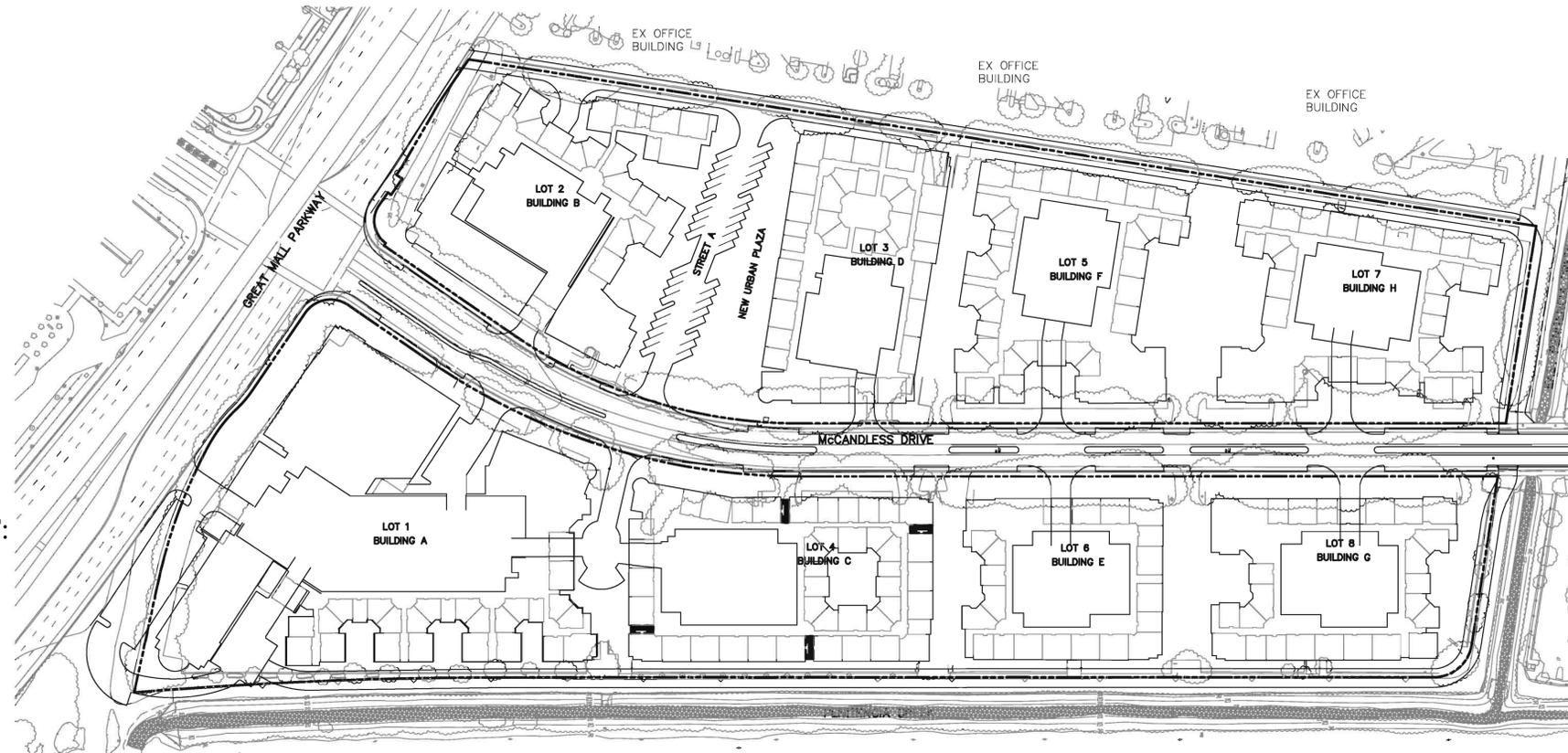
RUGGERI-JENSEN-AZAR & ASSOCIATES
8055 CAMINO ARROYO
GILROY, CA 95020
408-848-0300

ARCHITECTS:

ARCHITECTS ORANGE
144 NORTH ORANGE STREET
ORANGE CA 92866
714-639-9860

LANDSCAPE ARCHITECT:

URBAN ARENA LLC
3195 REDHILL AVENUE, LOFT F
COSTA MESA, CA 92626
714-754-4500



SHEET NUMBER	TITLE
TM-1	TITLE SHEET
TM-2	EXISTING SITE PLAN
TM-3	PROPOSED SITE PLAN
TM-4	MCCANDLES CROSS SECTIONS
TM-5	TM-5 PRIVATE STREET SECTIONS
TM-6	TM-6 CONCEPTUAL LOTTING PLAN
TM-7	TM-7 CONCEPTUAL GRADING PLAN NORTH
TM-8	TM-8 CONCEPTUAL GRADING PLAN SOUTH
TM-9	TM-9 CONCEPTUAL UTILITY PLAN NORTH
TM-10	TM-10 CONCEPTUAL UTILITY PLAN SOUTH
TM-11	TM-11 CONCEPTUAL OFFSITE IMPROVEMENTS
TM-12	TM-12 MCCANDLESS OFFSITE IMPROVEMENTS
TM-13	TM-13 ACCESSIBILITY PLAN

LEGEND

PROPOSED	DESCRIPTION	EXISTING
[Symbol]	CATCH BASIN	[Symbol]
[Symbol]	ELECTRIC	[Symbol]
[Symbol]	ELECTROLIER	[Symbol]
[Symbol]	EXISTING CENTER-LINE	[Symbol]
[Symbol]	EXISTING EASEMENT	[Symbol]
[Symbol]	EXISTING SITE	[Symbol]
[Symbol]	FIRE HYDRANT	[Symbol]
[Symbol]	FLOW DIRECTION	[Symbol]
[Symbol]	LOT NUMBER	[Symbol]
[Symbol]	LOT-LINE	[Symbol]
[Symbol]	MANHOLE	[Symbol]
[Symbol]	PROJECT BOUNDARY	[Symbol]
[Symbol]	SANITARY SEWER	[Symbol]
[Symbol]	SPOT GRADE	[Symbol]
[Symbol]	STORM DRAIN	[Symbol]
[Symbol]	WATER	[Symbol]
[Symbol]	LIMIT OF BUILDING AT GROUND LEVEL	[Symbol]
[Symbol]	LIMIT OF BUILDING AT UNDERGROUND LEVEL	[Symbol]

ABBREVIATIONS

AC	ACRES	LP	LOW POINT
APN	ASSESSOR'S PARCEL NUMBER	MAX	MAXIMUM
BC	BACK OF CURB	MH	MANHOLE
BFE	BASE FLOOD ELEVATION	MIN	MINIMUM
BNDY	BOUNDARY	PD	PROJECT DRIVEWAY
CB	STORM DRAIN CATCH BASIN	PIV	POST INDICATOR VALVE
		PIWE	PRIVATE IRRIGATION WATERLINE EASEMENT
CL or C	CENTERLINE	PL	PROPERTY LINE
DWY	DRIVEWAY	PP	POWER POLE
ELECT	ELECTROLIER	PUS	PUBLIC SERVICE UTILITY EASEMENT
ESMT	EASEMENT		
EX	EXISTING	R/W	RIGHT OF WAY
FDC	FIRE DEPARTMENT CONNECTION	RW	RECYCLED WATER
FOC	FACE OF CURB	SD	STORM DRAIN
FFU	FINISHED FLOOR GROUND LEVEL	SDMH	STORM DRAIN MANHOLE
FG	FINISHED GRADE	SF	SQUARE FEET
FH	FIRE HYDRANT	SLD	SEE LANDSCAPE DRAWINGS
GB	GRADE BREAK	SS	SANITARY SEWER
HP	HIGH POINT	SSMH	SANITARY SEWER MANHOLE
		SWK	SIDEWALK

GENERAL NOTES:

- RECORD OWNER: MISSION WEST PROPERTIES, L.P.11
10050 BANDLEY DRIVE, CUPERTINO, CA 95014
- PROPERTY ADDRESS: 1315-1595 McCANDLESS DRIVE
1320-1590 McCANDLESS DRIVE
- APN: 086-33-092/093/094/095/098/099/101
- EXISTING LAND USE: COMMERCIAL/OFFICE BUILDING
- PROPOSED LAND USES:
GROSS AREA: 23.0 ACRES±
GROSS DENSITY: 69.0 DU/AC.
STREETS & PARKING: 1.5 ACRES±
NET DENSITY: 73.9 DU/AC.
BUILDINGS: 15.5 ACRES±
- RECYCLED WATER
• PUBLIC (McCANDLESS DRIVE)
- WATER (SCVWD ZONE1)
• PUBLIC (McCANDLESS DRIVE, STREETS B,D)
• PRIVATE (STREETS A,C,E)
- SEWER
• PUBLIC (McCANDLESS DRIVE, STREETS B,D)
• PRIVATE (STREETS A,C)
- STORM
• PUBLIC (McCANDLESS DRIVE, STREETS A,B)
• PRIVATE (STREETS C,D,E)
- STREET LIGHTS - ON PUBLIC STREETS WILL BE CONSTRUCTED TO THE CITY STANDARDS AND DEDICATED TO THE CITY
- STREET TREES: (McCANDLESS DRIVE) INSTALLED PER CITY STANDARDS, MAINTAINED BY THE LANDSCAPE MAINTENANCE DISTRICT
- STREETS: STREET B WILL BE A PUBLIC STREET. STREETS A, C, D AND E WITHIN THE RESIDENTIAL AREA WILL BE PRIVATELY MAINTAINED BY A HOMEOWNERS' ASSOCIATION. ALL PRIVATE STREETS WILL BE IN PSUE'S (MIN. LONGITUDINAL SLOPE = 0.6%)
- DATUM: CITY OF MILPITAS DATUM
- NO EXISTING WELLS.
- STREET LIGHTS: STREET LIGHTS ON PRIVATE STREETS WILL BE MAINTAINED BY THE HOMEOWNERS' ASSOCIATION.
- FLOOD ZONE AO: FLOOD PLANE DEPTH OF 1 TO 3 FEET (USUALLY SHEET FLOW ON SLOPING TERRAIN); AVERAGE DEPTHS DETERMINED. FOR AREAS OF ALLUVIAL FAN FLOODING VELOCITIES ALSO DETERMINED. (FIRM COMMUNITY PANEL NUMBER 060344 0003 G, DATED JUNE 22, 1998)
- PROPOSED GRADES AS SHOWN ARE CONCEPTUAL. FINISH GRADING IS SUBJECT TO FINAL DESIGN, AND MAY VARY.
- ALL GRADING SHALL BE DONE IN ACCORDANCE WITH THE RECOMMENDATIONS AND CONDITIONS OF THE GEOTECHNICAL ENGINEER AND SUPPLEMENTAL REPORTS REGARDING THIS PROJECT.
- ALL EROSION CONTROL MEASURES SHALL BE DONE IN CONFORMANCE WITH THE CRITERIA AND STANDARDS OF THE CITY OF MILPITAS.
- THE EXISTING TOPOGRAPHY IS BASED ON AERIAL SURVEYS RECEIVED FROM AERO GEODETIC, DATED MAY 15, 2006; THE CONTOURS SHOWN ON THIS PLAN REPRESENT GROUND ELEVATIONS, AS DETERMINED AT THE TIME OF SAID SURVEY. EXISTING SURFACE IMPROVEMENTS DEPICTED ON THE TOPOGRAPHIC MAPPING MAY DIFFER FROM CURRENT SITE CONDITIONS SINCE CONSTRUCTION ACTIVITIES ON THE COMMERCIAL SITE ARE ON GOING.
- COMMON OPEN SPACE PARCELS AND STREET PARCELS MAY BE SPLIT INTO ADDITIONAL PARCELS AS PART OF MULTIPLE FINAL MAPS.
- BUILDING DESIGNATIONS ARE FOR IDENTIFICATION PURPOSES ONLY AND ARE NOT INTENDED AS FINAL.
- PROJECT MAY REQUIRE MULTIPLE FINAL MAPS FOR CONDOMINIUM PURPOSES AND OR LOT LINE ADJUSTMENT BY SEPARATE INSTRUMENT.

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
10050 BANDLEY DRIVE, SUITE 240
CUPERTINO, CA 95014
PHONE: (408) 848-0300 FAX: (408) 848-0302

TENTATIVE MAP
TITLE SHEET
McCANDLESS PROJECT
MILPITAS, CALIFORNIA

SCALE	NO SCALE	DATE	BY	CHK	REVISIONS
		MAY 2010			

SHEET
TM-1
OF 13 SHEETS
JOB NO.
072030

Exhibit B

FORM OF MEMORANDUM OF OWNER PARTICIPATION AGREEMENT

Recording Requested by and When Recorded,
Return To:

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

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

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF OWNER PARTICIPATION AGREEMENT

This Memorandum of the Owner Participation Agreement (“**Memorandum**”) dated as of August 3, 2010, is entered into by and between the Redevelopment Agency of the City of Milpitas, a public agency (“**Agency**”) and Integral Communities McCandless, LLC, a California limited liability company (“**Developer**”). The Agency and the Developer may be referred to herein as the “**Parties**”.

1. Consistent with California Community Redevelopment Law (Health & Safety Code Section 33000 *et seq.*) and the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 (“**Project Area**”), Agency and Developer have entered into that certain Owner Participation Agreement, dated as of the date hereof (the “**OPA**”), pursuant to which Agency has agreed to convey to Developer and Developer has agreed to develop certain real property (the “**Property**”) located within the Project Area and more particularly described in Attachment 1 attached hereto and incorporated herein by this reference. Capitalized terms used but not defined in this Memorandum have the meanings given in the OPA.

2. Among other conditions, the OPA provides that in order to receive all of the Agency Financial Assistance set forth in Article 4 thereof, Developer intends to acquire all of the Property and develop 1,328 residential units, of which fifteen percent (15%) (199 units at full build out) shall be restricted to households of Moderate Income. In conjunction with the aforementioned residential units, the Developer shall also develop a minimum of 92,000 square feet of retail space within the first two phases of development. Of that commercial retail space, at least 87,300 square feet shall be located at the ground level and up to 4,700 square feet can be mezzanine space to the approval of the City (which approval shall not be unreasonably withheld, conditioned or delayed), and a grocery store space between 30,000 and 45,000 square feet, together with parking, open space and other amenities. Said grocery store space may be reduced to a 15,000 square foot minimum sized space

for specific Agency approved grocery tenants that, in the reasonable determination of the Agency Executive Director, meet or promote the development goals for the Project Area. The OPA further provides that the grocery store space shall be completed no later than August 3, 2020.

3. The OPA further provides that (i) except as permitted by the OPA, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of Developer's interest in the Property or the improvements located thereon without the prior written approval of the Agency; and (ii) any transferee of all or part of the Property shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the OPA which pertain to the portion of the Property transferred, including without limitation, the provisions of the Regulatory Agreement.

4. The Parties have executed and recorded this instrument to give notice of the OPA and the respective rights of the Parties thereunder. Copies of the unrecorded OPA are available at the offices of the Agency, 455 East Calaveras Boulevard, Milpitas, California 95035-5411, and such document is incorporated by reference in its entirety in this Memorandum. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the OPA. In the event of any inconsistency between this Memorandum and the OPA, the OPA shall control.

5. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws. This Memorandum may be executed in counterparts.

6. The OPA shall bind and inure to the benefit of the Parties and their respective successors and assigns

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic

By: _____

Name: _____

Its: _____

Attest:

Agency Secretary

Approved as to Form:

Agency Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE

DEVELOPER:

INTEGRAL COMMUNITIES
MCCANDLESS, LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY

By: _____
Its: _____

SIGNATURES MUST BE NOTARIZED.

State of California)

County of _____)

On _____, 20__, before me, _____, a 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 _____, 20__, before me, _____, a 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)

Attachment 1

PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcels 4 through 10, as shown on that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 5, 1984, in Book 536 of Maps, Pages 41, 42 and 43.

Excepting therefrom that portion of Parcel 6 of said Parcel Map conveyed to the Santa Clara County Transit District in Deed recorded March 9, 2000 as Instrument No. 15175678 of Official Records.

APN: 086-33-092,093,094,095,098,099, 101

Exhibit C

FORM OF CERTIFICATE OF COMPLETION

NOTE: The following form of Certificate of Completion has been prepared for Building 1 of Lot 1. With appropriate changes in lot and building designation, the same form of Certificate of Completion will be used for subsequent buildings.

Recording requested by

and when recorded mail to:

Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

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

(Space above this line for Recorder's use.)

CERTIFICATE OF COMPLETION

This Certificate of Completion (the "**Certificate**") is made by the Redevelopment Agency of the City of Milpitas, a public agency (the "**Agency**") effective as of _____, 20__.

RECITALS

A. Agency and Integral Communities McCandless, LLC, a California limited liability company (the "**Developer**") entered into that certain Owner Participation Agreement ("**OPA**") dated as of August 3, 2010 concerning the redevelopment of certain real property located in the City of Milpitas, California, including Building 1 on Lot 1 more fully described in Attachment 1 attached hereto (the "**Building**"). A Memorandum of the OPA was recorded in the Official Records of Santa Clara County as Instrument No. _____, Book _____, Page _____. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the OPA.

B. Pursuant to Section 3.14 of the OPA, the Agency is required to furnish the Developer or its successors with a Certificate of Completion upon completion of construction of a building on the Property in accordance with the OPA and issuance by the City of Milpitas of a Certificate of Occupancy for the that building.

C. The Agency has determined that development of the Building has been satisfactorily completed in accordance with the OPA.

NOW, THEREFORE, Agency hereby certifies as follows:

1. Development of the Building has been satisfactorily completed in conformance with the OPA.

2. All use, maintenance and nondiscrimination covenants contained in the OPA shall remain in effect and enforceable in accordance with the OPA. This Certificate does not constitute evidence of Developer’s compliance with those covenants in the OPA that survive the issuance of this Certificate, including without limitation, compliance with the Regulatory Agreement entered into pursuant to the OPA.

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance development of the Property or any part thereof and does not constitute a notice of completion under California Civil Code Section 3093.

4. Nothing contained in this instrument shall modify any provisions of the OPA or any other document executed in connection therewith.

IN WITNESS WHEREOF, Agency has executed and issued this Certificate of Completion as of the date first written above.

**REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS**

By: **FORM-DO NOT SIGN**

Name: _____
Executive Director

ATTEST:

By: **FORM- DO NOT SIGN**
Agency Secretary

APPROVED AS TO FORM:

By: **FORM-DO NOT SIGN**
Agency Counsel

SIGNATURES MUST BE NOTARIZED.

Attachment 1

(Attach legal description.)

Exhibit D

FORM OF REGULATORY AGREEMENT

**Recording requested by and
when recorded mail to:**

Redevelopment Agency of the
City of Milpitas
455 East Calveras
Milpitas, CA 95035
Attention: Executive Director

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

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

a public body, corporate and politic

and

INTEGRAL COMMUNITIES McCANDLESS, LLC

a California limited liability company

dated as of _____, 2010

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 2010 (“**Effective Date**”) by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the “**Agency**”) and Integral Communities McCandless, LLC, a California limited liability company (“**Owner**”). Agency and Owner are hereinafter collectively referred to as the “**Parties.**”

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.), the Agency has responsibility to implement the redevelopment plan adopted by the City Council of the City of Milpitas, California (the “**City**”) by Ordinance No. 192 on September 21, 1976 (as subsequently amended, the “**Redevelopment Plan**”) for Project Area No. 1.

B. Owner has purchased or has the contractual right to purchase certain real property known as Santa Clara County Assessor’s Parcel Nos. 086-33-092 through -095, 086-33-098 through -099 and 086-33-101 in the City of Milpitas, California and more particularly described in Attachment 1 attached hereto, and a portion of which will be used for residential units [as depicted on Attachment 1] (hereinafter, with respect to the residential real property for which this Agreement is being recorded, the “**Property**”).

C. Owner intends to construct, own and operate on the Property a phased mixed use residential and commercial project (the “**Project**”). When completely built out, the residential portion of the Project shall consist of one thousand one hundred eighty (1,328) rental residential units in which, pursuant to this Agreement, fifteen percent (15% or one hundred ninety-nine (199) units at full build out) (the “**Restricted Units**”) will be restricted for occupancy by moderate-income households at either affordable rent or for sale at affordable prices for a period of not less than 55 years from the date of the certificate of occupancy for each such building.

D. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project’s Restricted Units for the benefit of the Project occupants. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner’s successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

“Affordable Housing Cost” shall be as defined in California Health and Safety Code Section 50052.5 or any successor thereto, and the regulations promulgated thereunder, as adjusted for household size and unit size. If the statute is no longer in effect and no successor statute is enacted, "Affordable Housing Cost" will as defined in Health and Safety Code section 50052.5 as it read at the time of its repeal.

"Area Median Income" or "AMI" means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development (“**HCD**”)(as published in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

"Eligible Household" means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Subsection 2.1 and Attachment 2.

“Eligible Purchaser” means a prospective purchaser of a Restricted Ownership Unit who has been pre-qualified by the Agency or its designee and who satisfies all of the following requirements:

- (a) Gross Income for the prospective purchaser's household for the full calendar year immediately preceding the date of purchase does not exceed 120% of the Area Median Income.
- (b) The prospective purchaser intends to occupy the Restricted Ownership Unit as his or her principal residence.
- (c) The prospective purchaser does not own any other residential real property at the time of the purchase.
- (d) The prospective purchaser meets all other applicable eligibility requirements of the Agency in effect at the time of the purchase.

"Gross Income" shall have the meaning ascribed to such term in 25 Cal. Code of Regulations Section 6914.

"Moderate-Income" means an annual household gross income of not greater than 120% of the Area Median Income, adjusted for household size.

"Qualifying Rent" means a monthly rent that does not exceed one-twelfth (1/12th) of the following, less a utility allowance and such other adjustments as required pursuant to California Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*):

For Moderate-Income Households: 30% times 110% of Area Median Income, adjusted for family size appropriate for the unit.

"Adjusted for family size appropriate for the unit" means the following:

Studio units -one person
One bedroom -two persons
Two bedroom -three persons
Three bedroom -four persons
Four bedroom -five persons

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

"Rent Restricted" means the gross rent charged for an applicable Restricted Rental Unit does not exceed the Qualifying Rent for the applicable household income category as adjusted for family size appropriate for the unit (as defined in this Section 1).

"Restricted Rental Unit" means a Restricted Unit that is reserved for occupancy at a Qualifying Rent by a Moderate-Income Household as adjusted for family size appropriate for the unit, in accordance with and as set forth in Sections 1, 2.1, 2.2 and Attachment 2.

"Restricted Ownership Unit" means a Restricted Unit that is reserved for sale to an Eligible Purchaser in accordance with and as set forth in Sections 2.1 and 2.2 and Attachments 2 and 5.

"Restricted Unit" means a Restricted Ownership Unit or a Restricted Rental Unit.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the construction and operation of a multi-phase mixed use residential and commercial development in compliance with the development approvals granted by the City of Milpitas, that certain Owner Participation Agreement by and between the Redevelopment Agency of the City of Milpitas and Integral Communities McCandless, LLC, dated August 3, 2010 (the "Owner Participation Agreement"), and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of Agency. Notwithstanding the foregoing or anything to the contrary contained herein, if the

terms of financing for the Project require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

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 each building (the "Affordability Period"), fifteen percent (15%) of the dwelling units in each building constructed in the Project shall be either Restricted Rental Units or Restricted Ownership Units and occupied (or if vacant, available for occupancy) by Eligible Households whose income does not exceed Moderate-Income in accordance with Attachment 2 attached hereto and incorporated herein by this reference.

2.2 Restricted Units.

2.2.1 Location. The initial location of the Restricted Units shall be as stated on the dispersal plan attached to this Agreement as Attachment 4.

2.2.2 Restricted Rental Units. Rents for Restricted Rental Units shall be limited to Qualifying Rents. Notwithstanding the foregoing, no tenant qualifying for a Restricted Rental Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's income increases to exceed the qualifying limit for such Restricted Rental Unit. A household which at initial occupancy qualifies as an Eligible Household shall be treated as continuing to be an Eligible Household of the same income category as initially established so long as the household's income does not exceed 140% of the applicable income limit. In the event the household income of an Eligible Household that qualified as Moderate-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. In the event that re-certification of tenant income indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number required as specified in Section 2.1 and Attachment 2, Owner shall rectify the condition by renting the next available unit(s) in the Project to Eligible Household(s) until the requirements of this Agreement are satisfied.

2.2.3 Restricted Ownership Units. Owner by and for itself and any successors in interest hereby covenants and agrees that each Restricted Ownership Unit thereon may only be sold to an Eligible Purchaser at an Affordable Housing Cost. Agency or its designee shall screen prospective purchasers to determine their eligibility. Agency and Owner shall market the Restricted Ownership Units to Eligible Purchasers. Each Eligible Purchaser shall be required to execute a Resale Restriction Agreement and Option to Purchase in substantially the form attached hereto as Attachment 5 ("Resale Agreement") with the Agency. The Resale Agreement shall provide that the Agency shall have a right of first offer to purchase the Restricted Ownership Unit and an option to purchase such unit upon the occurrence of specified triggering events.

2.3 Unit Sizes, Design and Rental Preferences. The Restricted Units shall consist of the units as set forth in Attachment 2. 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 by state or federal sources of financing for the Project.

2.4 RESERVED.

2.5 Sale of Units as Condominiums. Owner shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project during the term of this Agreement without the consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.

Upon the issuance of Agency consent, prior to the expiration of the Affordability Period, Owner may sell the Restricted Units as condominiums in phases. Owner covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof, that upon the sale of the Restricted Units as condominiums and thereafter, the Property shall remain subject to the uses specified in, and otherwise comply with the terms and conditions of, this Agreement. All uses conducted on the Property, including, without limitation, all activities undertaken by the Owner pursuant to this Agreement, shall conform to all applicable provisions of the City of Milpitas Municipal Code. Owner covenants and agrees to sell the Restricted Units at an Affordable Housing Cost. The sales contract for each Restricted Unit shall not exceed the Affordable Housing Cost. Once a Restricted Unit has been sold as a Restricted Ownership Unit, it shall no longer be considered a Restricted Rental Unit.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants of the Restricted Rental Unit, on the same basis as all other prospective tenants of the Restricted Rental Unit, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.2 Non-Discrimination. Owner covenants for itself and its successors and assigns that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the residential portions of the Project or the Property, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenants shall run with the land. All deeds, leases or contracts made or entered into by Owner its successors or assigns, as to any portion of the Property or the Project shall contain or be subject to substantially the following nondiscrimination and non-segregation language:

(a) In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee, or any persons claiming under or through the grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

(b) In leases: "The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of land."

3. Reporting Requirements.

3.1. Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Rental Unit, and on every anniversary thereafter, a written certificate stating total gross household income in such format and with such supporting documentation as Agency may reasonably require. Owner shall retain such certificates for not less than three (3) years, and upon Agency's request, shall provide copies of such certificates to Agency and make the originals available for Agency inspection.

3.2 Annual Report; Inspections. Until there are no longer any Restricted Rental Units at the Property, Owner shall submit an annual report ("Annual Report") for the prior calendar

year by May 1 to the Agency in form satisfactory to Agency, together with a certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each Restricted Rental Unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; and (vii) documentation of source of household income.

Upon Agency's request, Owner shall include with the Annual Report, an income recertification for each household occupying a Restricted Rental Unit, documentation verifying tenant eligibility, and such additional information as Agency may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by Agency; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Agency with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Agency to enter and inspect the Property and the Restricted Units during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the 55th anniversary of the issuance of the final certificate of occupancy for each building in the project, however, the obligations with respect to any specific Restricted Unit shall only remain in effect through the 55th anniversary of the final certificate of occupancy for the building in which such Restricted Unit was located.

Upon request by either party after the issuance of said certificate of occupancy, the parties shall record an addendum to this Agreement setting forth the termination date.

4.2 Effectiveness Survives Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein or (ii) any payment, prepayment or extinguishment of any loan or note secured by the Property.

4.3 Reconveyance. Upon the termination of this Agreement with respect to a specific building, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement with respect to such building; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term specified in Section 4 1.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the residential portion of the Project to the covenants and restrictions set forth in this Agreement. The Agency and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Agency, regardless of any sale, assignment, conveyance or transfer of the Property, the residential portion of the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Agency an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of Agency.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and re-certification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Agency shall have no responsibility for management or maintenance of the Property or the Project.

6.2 Management Entity. Agency shall have the right to review and reasonably approve the qualifications of the management entity proposed by Owner for the Project. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner, or its successors and assigns, shall at its own expense, use commercially reasonable efforts to maintain or cause to be maintained the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations; provided, however, that the Property and the Project must be maintained in tenantable living conditions only so long as they are used or held for rental purposes. Without limiting the foregoing, Owner agrees to use commercially reasonable efforts to maintain the

Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking garage and walkways) in a condition free of all waste, nuisance, debris, un-maintained landscaping, graffiti, disrepair, and abandoned vehicles/appliances, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Owner shall use commercially reasonable efforts to prevent and/or rectify any physical deterioration of the Property and the Project and to make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Project. Notwithstanding the above, if Agency approves conversion to a condominium for any building, such obligations may be assumed by a property owner's association.

6.3.1 Agency's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and Owner has not commenced to cure such breach within ten (10) days after written notice from Agency (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Agency (with respect to landscaping, building improvements and general maintenance), then Agency, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by Agency in connection with the foregoing (including but not limited to, staff services, administrative costs, legal services, and third-party costs), shall constitute an indebtedness and shall be paid by Owner to Agency upon demand. All such sums remaining unpaid thirty (30) days following delivery of Agency's invoice therefor shall bear interest at the rate of 10% per annum. If Owner fails to pay within sixty (60) days following delivery of the Agency invoice, such costs shall be a lien upon the Property. To the extent permitted by any Third Party Lender (as defined in Section 8.3), the Agency may enforce and foreclose such lien in any manner legally allowed.

6.4 Marketing and Management Plan. Not later than 180 days following issuance of building permits for the Project, Owner shall submit for Agency review and approval (which approval shall not be unreasonably withheld, conditioned, or delayed), a plan for marketing and managing the Property ("Marketing and Management Plan"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Project tenants for the Restricted Rental Units. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement, shall submit proposed modifications to Agency for its review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

6.5 Approval of Amendments. If Agency has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or

change to any of the foregoing within sixty (60) days following Agency's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Agency.

6.6 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public entity, authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

6.7 Insurance Coverage. Prior to issuance of building permits for the Project, and continuing throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Attachment 3, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Attachment 3; provided however, during such time that lenders providing financing for the Project impose insurance requirements that are inconsistent with the requirements set forth in Attachment 3, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders so long as such lender requirements are commercially reasonable and provide coverage to the Agency comparable with that previously required by the Agency. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of Attachment 3 pertaining to (i) provision to Agency of proof of insurance for the Project, (ii) naming of Agency and the City of Milpitas as additional insureds, and (iii) provision to Agency of notice of cancellation or reduction in coverage.

6.8 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within 120 days after the damage or loss occurs and shall be completed within one year thereafter (or three years if substantially all of the building is damaged), provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders providing financing for the Project impose requirements that differ from the requirements of this Section, the requirements of such lenders and investors shall prevail, provided such requirements are commercially reasonable.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of Agency, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of Agency, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such

interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as Agency may reasonably request.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted under this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "Transfer") of the whole or any part of the Property, the Project, or the Improvements, without the prior written consent of the Agency.

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the granting of permanent easements to a public entity; (iii) the dedication of any property required pursuant to this Agreement; (iv) after the development thereof, the sale of individual parcels, residential units, retail space or a building; (v) after the development thereof, the lease of individual parcels, residential units, retail space or a building; (vi) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property subject to the requirements of Article VII of the Owner Participation Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (vii) after the development thereof, the transfer to a property owners' association; (viii) transfer to any entity in which Owner holds a controlling interest or which holds a controlling interest in Owner; or (ix) with Agency consent, which consent shall not be unreasonably withheld, conditioned or delayed. If Owner does not receive a written disapproval of a transfer pursuant to clause (x) hereof such transfer shall be deemed approved.

In addition, Agency shall not withhold its consent to the sale, transfer or other disposition of one or more buildings in the Project, in whole or in part, provided that (1) the Project (and such building(s)) is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Agency with respect to the assumption of the Owner's obligations under this Agreement, and upon Agency's request, delivers to the Agency an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three years' experience in the ownership, operation and management of low-income rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

Consent to any proposed Transfer may be given by the Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency's governing board. If a proposed Transfer has not been rejected by Agency in writing within sixty (60) days following Agency's receipt of written request by Owner and full

documentation, as determined by the Agency, demonstrating purported compliance with the requirements of this Agreement, it shall be deemed approved. Notwithstanding the foregoing, the consent of the Agency shall not be required to transfer condominiums, provided that, in the case of a Restricted Ownership Unit, the buyer of such Restricted Ownership Unit executes a Resale Agreement in the form of Attachment 5 and such Resale Agreement is recorded concurrently with the transfer of the condominium, and the transfer complies with the other applicable restrictions set forth in this Agreement.

8.3 Encumbrances. Owner agrees to use commercially reasonable efforts to ensure that any deed of trust secured by the Restricted Units within the Project for the benefit of a lender other than Agency ("Third Party Lender") shall contain each of the following provisions: (i) Third-Party Lender shall use its commercially reasonable efforts to provide to Agency a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Agency shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional 60 days. Owner agrees to provide to Agency a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of, any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, Agency shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("Event of Default"):

- (a) Upon ten (10) days' written notice from Agency, the occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within 10 days.
- (c) Upon ten (10) days' written notice from Agency, and subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments on the Property or the Project prior to delinquency or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within 10 days.

(d) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Agency shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith.

(e) Owner's investors and lenders shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner and in addition, for one hundred twenty days after foreclosure on the Project by lender. Provided that Agency has been given written notice of the address for delivery of notices to such investors and lenders, Agency shall provide any notice of default hereunder to such parties concurrently with the provision of such notice to Owner, and as to such parties, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Subsection 11.3.

9.2 Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Agency may proceed with any of the following remedies:

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;

(c) Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The Agency may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. Owner shall indemnify, defend (with counsel reasonably approved by Agency) and hold Agency, the City, and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, judgment, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "Claims") arising directly or indirectly, in whole or in part, as a result of or in connection with (i) Owner's development or management of the Property and the Project, or (ii) Owner's failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10

shall not extend to Claims resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that Agency does not and shall not waive any rights against Owner that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Owner, of any of the insurance policies described in this Agreement.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by Agency of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Agency to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by Agency at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

Agency: Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Owner: Integral Communities Milpitas, LLC
160 Newport Center Drive, Suite 240
Newport Beach, California 92660
Attn: Craig A. Manchester

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.6 Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Agency is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Agency Executive Director or by any person who shall have been designated by the Agency Executive Director, without further approval by the governing board of the Agency.

11.7 Non-Liability of Agency and Agency Officials, Employees and Agents. No member, official, employee or agent of the Agency or the City of Milpitas shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the Agency, or for any amount of money which may become due to Owner or its successor or for any obligation of Agency under this Agreement.

11.8 Headings' Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Attachments. This Agreement contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written

agreements between the Parties with respect thereto. The attachments hereto are incorporated herein by this reference.

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

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

**INTEGRAL COMMUNITIES McCANDLESS, LLC
a California limited liability company**

By: _____

Its: _____

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By: _____
Thomas C. Williams, Executive Director

ATTEST:

By: _____
Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

By: _____
Agency Counsel

SIGNATURES MUST BE NOTARIZED.

Attachment 1 to Form of Regulatory Agreement

PROPERTY

(Attach legal description.)

Attachment 2 to Form of Regulatory Agreement

Number of Restricted Units

Building	Number of moderate units
Lot 1/Building 1	52
Lot 3/Building 3	32
Lot 2/Building 2	25
Lot 4/Building 4	26
Lots 5 and 6/Buildings 5 and 6	31
Lots 7 and 8/Buildings 7 and 8	33
TOTAL	199

Attachment 3 to Form of Regulatory Agreement

INSURANCE REQUIREMENTS

Prior to issuance of building permits for the Project and throughout the term of this Agreement for as long as the residential components of the Project are operated as rental units and/or Owner owns such units (i.e., has not sold them to affordable households), Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss -Special form (ISO Form CP 1030) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Property ("Improvements"), in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Property, and (b) cover floods if the Property is in a Special Hazard Area, as determined by the Federal Emergency Management Agency or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Twenty Five Thousand Dollars (\$25,000) deductible prior to completion of construction and a Ten Thousand Dollars (\$10,000) deductible after completion of construction (or such higher deductible approved by the Agency, which approval shall not be unreasonably withheld) from the loss payable for any casualty. The policies of insurance carried in accordance with this paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Property and the Improvements. The limits of liability under this Paragraph B shall be not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a deductible no greater than Twenty Five Thousand Dollars (\$25,000) deductible prior to completion of construction and a Ten Thousand Dollars (\$10,000) after completion of construction (or such higher deductible as may be approved by Agency, which approval shall not be unreasonably withheld). The insurance shall also include coverage for:

(i) liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Project or the Property;

(ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Property or the Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;

(iii) broad form property damage liability;

(iv) additional insured and primary insured endorsements protecting the Agency, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;

(v) personal injury endorsement.

C. Worker's Compensation Insurance. Worker's compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Property or engaged in services or operations in connection with the Project or the Property. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Property include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in paragraph A above for property insurance, covering all construction activities on the Property.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Project, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit C, Owner shall deliver to Agency certificates evidencing the insurance required to be carried by Owner under this Exhibit C. If requested by Agency, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance-policies required hereunder.

Insurance policies to be provided hereunder shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against Agency, the City of Milpitas, Owner or any tenant of the Project for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, Agency and the City of Milpitas, and their respective elected and appointed officials, officers, employees and agents shall be named as additional insured under

the liability insurance required to be maintained by Owner hereunder. Agency shall be named as loss payee on the property insurance policies required to be maintained hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Agency.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with Agency prior to commencement of construction of any Improvements.

(f) Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that Agency may carry.

(h) Each policy shall expressly provide that Agency shall not be required to give notice of accidents or claims and that Agency shall have no liability for premiums.

F. Blanket Policies. Any insurance provided for in this Exhibit C may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Property and the Project shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement.

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, Agency and Owner each waive any right to recover against the other (a) damages for injury or death of persons, (b) damage to property, (c) damage to the Property or the Improvements or any part thereof, or (d) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either Agency or Owner. This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

H. Compliance with policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Property, and Owner shall so perform and satisfy the requirements of the

companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

Attachment 4 to Form of Regulatory Agreement

DISPERSAL PLAN

Location and Dispersal of Restricted Units. The Restricted Units shall be restricted to occupancy by Eligible Households and shall be composed of Restricted Units meeting the eligible income levels described in the Regulatory Agreement. The size and number of bedrooms of the Restricted Units shall be substantially the same size as units of the corresponding bedroom number which are not Restricted Units. Likewise, the amenities of Restricted Units shall be the same as the “base amenity package” offered to units which are not Restricted Units. The initial location of the Restricted Units is not yet known, but will be agreed upon by the Agency and the Developer prior to the receipt of a building permit for any specific building. Notwithstanding the foregoing, the Restricted Units may be moved from one location to another throughout the Project during such period, provided that if the location of a Restricted Unit is moved, the Restricted Units, including the replacement Restricted Unit, shall be remain dispersed throughout the Project and shall not be concentrated in any area of the Project or any floor of the Project. If a Restricted Rental Unit becomes vacant, and no applicant from an Eligible Household meeting Owner’s qualifying requirements applies to lease such Restricted Rental Unit, Owner may lease the unit to a non-qualifying person but must hold the next available unit open to an Eligible Household meeting Owner’s qualifying requirements in the manner described in the Regulatory Agreement. By the first of May of each year, the Owner shall submit a unit map and written report (“Annual Dispersal Plan Report”) showing the location of all Restricted Units, their type, and a brief text summary of which units have been relocated since the previous calendar year’s report. Such Annual Dispersal Plan Reports shall be used to ensure compliance with the performance standards stated herein.

Attachment 5 to Form of Regulatory Agreement

RESALE AGREEMENT

Recording requested by and when recorded mail to:

Redevelopment Agency of the City of Milpitas
455 East Calveras
Milpitas, CA 95035
Attention: Executive Director

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

Space above this line for Recorder's use.

RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE

Owner: _
Property Address: _
Milpitas, California _
Name of Development:

This RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE (the "Agreement") is entered into by and between the Milpitas Redevelopment Agency (the "Agency") and _____ ("Owner") regarding certain improved real property, which is more particularly described in Exhibit 1 attached hereto and incorporated herein and commonly known as _____, Milpitas, California (the "Property") effective as of ____ 20__ (the "Effective Date"). Agency and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

A. Agency pursuant to the Community Redevelopment Law (California Health & Safety Code sections 33000 et seq.) and the Agency's Redevelopment Plan maintains an affordable housing fund, which it uses for the purpose encouraging the construction of housing within the Redevelopment Plan Area that is affordable to persons of very low, low, and moderate income (the "Program").

B. Pursuant to the Program, the Agency and Integral Communities McCandless, LLC ("Developer") entered into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants, _____ (the "Regulatory Agreement") under which Developer agreed to construct Restricted Units (as defined in the Regulatory Agreement) and if it received Agency approval to sell a Restricted Unit, to sell such Restricted Unit at prices that are affordable to persons of moderate income and in exchange the Agency has agreed to provided certain financial incentives.

C. Owner is the owner of the Property.

D. Owner is an eligible moderate income purchaser under the Program, intends to live in the Property as an owner occupant, and agrees to maintain the Property as Owner's principal residence.

E. In order to maintain and preserve the Property as housing affordable to eligible moderate income purchasers, it is necessary to restrict the use and resale of the Property through imposition of the occupancy and resale restrictions set forth in this Agreement. These restrictions are intended to prevent initial and subsequent purchasers from using the Property for purposes incompatible with the Program and realizing unwarranted gains from sales of the Property at unrestricted prices. The terms and conditions of this Agreement are intended to provide the necessary occupancy and resale restrictions to ensure that the Property is used, maintained, and preserved as housing affordable to eligible moderate-income purchasers. To further serve the purposes of the Program, it is necessary that the Agency be granted an option to purchase the Property so that the Property may be resold by the Agency to an Eligible Household as defined herein.

F. Accordingly, the Parties desire to enter into this Agreement, which provides, generally, that Owner may only sell the Property to Eligible Households (i.e. households meeting the household income limitations set forth herein) at a price not to exceed the price equal to the initial purchase price adjusted to reflect increases in median household income since the Property was initially purchased by Owner. Alternatively, the Agreement provides that the Agency may exercise its option to purchase the Property at the same price as a sale to an Eligible Household.

G. The Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of moderate income who otherwise would be unable to afford such housing. To protect and preserve this resource it is necessary, proper, and in the public interest for the Agency to administer occupancy and resale controls consistent with the Program by means of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Program, Owner and the Agency hereby agree as follows:

1. Definitions.

- (a) “Adjusted Resale Price” is defined in Section 5(d).
- (b) “Adjustment” is defined in Section 5.
- (c) "Affordable Unit Cost" shall mean a sales price that results in annual housing costs, including principal payments, interest, property taxes, homeowners' insurance, homeowners' association dues, and mortgage insurance that do not exceed 30% of income level for the Eligible Household, and as set forth in California Health and Safety Code Section 50052.5 or any successor thereto, and the regulations promulgated thereunder, as adjusted for household size and unit size. If the statute is no longer in effect and no successor statute is enacted, "Affordable Housing Cost" will as defined in Health and Safety Code section 50052.5 as it read at the time of its repeal.
- (d) “Agency’s Share” is defined in Section 11.
- (e) "Area Median Income" or "AMI" means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development ("**HCD**") (as published in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.
- (f) “Base Price” is defined in Section 4(a).
- (g) “Base Resale Price” is defined in Section 4.
- (h) “Consent to Transfer” is defined in Section 3(d).
- (i) “Effective Date” is defined in the opening paragraph of this Agreement.
- (j) “Eligible Households is a person or family that meets the definition in Section 1(e) above.
- (k) “HCD” is defined in Section 1(e) above.
- (l) “HUD” is defined in Section 1(e) above.
- (m) “Index” is defined in Section 4(b).
- (n) “Notice of Exercise” is defined in Section 3(d).
- (o) “Notice of Intent to Transfer” is defined in Section 3(d).
- (p) “Option” is defined in Section 3(a).
- (q) “Option Event” is defined in Section 3(c).
- (r) “Permitted Encumbrances” is defined in Section 10.
- (s) “Permitted Exceptions” is defined in Section 3(d).
- (t) “Permitted Transfers” is defined in Section 9.
- (u) "Persons and families of moderate income" means persons and families whose "gross income" (as such term is defined in 25 California Code of Regulations section 6914) does not exceed one hundred twenty percent (120%) of the Area Median Income for Santa

Clara County, as adjusted for household size, for the full calendar year preceding the date of their purchase of the Property.

(v) "Property" is defined in the opening paragraph of this Agreement.

2. Program Requirements.

(a) Affordability Restrictions. Owner hereby covenants and agrees that during the term of this Agreement all of the requirements and restrictions of this Agreement shall apply, and the Property shall be sold or otherwise transferred only pursuant to the terms and conditions of this Agreement and only to (i) Eligible Households at a price not to exceed the Adjusted Resale Price, as defined in Section 5, (ii) the Agency pursuant to Section 3, or (iii) a Permitted Transferee pursuant to Section 9.

(b) Disclosure. DURING THE TERM OF THIS AGREEMENT THERE SHALL BE NO SALE OR OTHER TRANSFER OF THE PROPERTY WITHOUT THE WRITTEN CERTIFICATION BY THE AGENCY THAT THE TRANSFEREE QUALIFIES AS AN ELIGIBLE HOUSEHOLD AND THAT THE PROPERTY IS BEING TRANSFERRED AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE, WHICH IS CAPPED AT THE AFFORDABLE UNIT COST. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS COVENANT SHALL BE VOID.

(c) Principal Residence Requirement. OWNER COVENANTS AND AGREES THAT HE/SHE/THEY SHALL OCCUPY THE PROPERTY AS HIS/HER/THEIR PRINCIPAL RESIDENCE FOR THE DURATION OF HIS/HER/THEIR OWNERSHIP AND SHALL NOT RENT OR LEASE THE PROPERTY OR PORTION THEREOF DURING THE TERM OF THIS AGREEMENT. Without limiting the generality of the foregoing, any absence from the Property by Owner for a period of ninety (90) or more days shall be deemed an abandonment of the Property as the principal residence of Owner in violation of the conditions of this Section; provided, however, that an absence from the Property by Owner for a period of ninety (90) or more days due to military service, medical treatment or inhabitation of the Property shall not be deemed an abandonment of the Property. Upon reasonable request by the Agency made from time to time, the Owner of the Property shall submit an affidavit to the Agency certifying that the Property is the Owner's principal residence and provide such documents and other evidence necessary to verify Owner's compliance with this Section. Abandonment of the Property shall constitute an Option Event (as defined in Section 3(c) below) and shall entitle the Agency to exercise its Option to purchase the Property.

3. Option to Purchase.

(a) Grant of Option to Purchase. Owner hereby grants to the Agency an option ("Option") to purchase all of Owner's right, title and interest in and to the Property upon the occurrence of an Option Event (defined in Section 3.c below), subject to the terms and conditions contained herein.

(b) Assignment of the Option. The Agency may assign the Option to another government entity, a non-profit affordable housing provider or an Eligible Household. The

Agency's assignment of the Option shall not extend any time limits contained herein with respect to the exercise period of the Option or the period within which the Property must be purchased.

(c) Events Giving Rise to Right to Exercise Option. The Agency shall have the right to exercise its Option upon the occurrence of any of the following events (each, an "Option Event"):

(i) Receipt of a Notice of Intent to Transfer (defined in Section 3(d)(i) below);

(ii) Any actual, attempted or pending sale, conveyance, transfer, lease or other attempted disposition of the Property or of any estate or interest therein, except as provided in Section 9 below;

(iii) Any actual, attempted or pending encumbrance of the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien, except as provided in Section 10 below;

(iv) Recordation of a notice of default and/or notice of sale pursuant to California Civil Code section 2924 et seq. (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

(v) Commencement of a judicial foreclosure proceeding regarding the Property;

(vi) Execution by Owner of any deed in lieu of foreclosure transferring ownership of the Property;

(vii) Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or

(viii) Any violation by Owner of any material provision of this Agreement including, without limitation, the conditions set forth in Section 2 above.

(d) Method of Exercising the Option.

(i) Notice of Intent to Transfer. If Owner desires to sell, convey, transfer (other than pursuant to Section 9), lease, encumber (other than pursuant to Section 10) or otherwise dispose of the Property or of any estate or interest therein, no less than sixty (60) days prior to the date of such proposed sale, conveyance, transfer, lease, encumbrance or disposition, Owner shall notify Agency in writing to that effect (the "Notice of Intent to Transfer"). The Notice of Intent to Transfer shall be substantially in the form attached hereto as Exhibit 2. In the case of a proposed sale of the Property to an identified prospective purchaser, the Owner shall (or shall cause such prospective purchaser to) submit to the Agency, together with the Notice of

Intent to Transfer, a copy of the prospective purchaser's income certification, a list of all assets owned by the prospective purchaser, and other financial information reasonably requested by Agency, in a form approved by the Agency, along with the income certification to be provided to any lender making a loan to the prospective purchaser. The Agency may require reasonable documentation evidencing and supporting the income and other financial information contained in the certifications.

(ii) Notice of Exercise. Upon the occurrence of any Option Event, the Agency may exercise its Option by delivering notice, pursuant to Section 16 and within the time period specified in Section 3(d)(iv), to Owner of Agency's intent to exercise such Option pursuant to the terms of this Agreement ("Notice of Exercise"). The Notice of Exercise may be in the form attached hereto and incorporated herein as Exhibit 3, or in such other form as the Agency may from time to time adopt. If the Option Event relates to the potential foreclosure of a mortgage under Sections 3(c)(iv), 3(c)(v), or 3(c)(vi), then the Agency shall also deliver the Notice of Exercise to the mortgagee or beneficiary under such mortgage, at such mortgagee's or beneficiary's address of record in the Office of the Recorder of Santa Clara County.

(iii) Notice of Consent to Transfer. If the Agency does not exercise the Option, it may give its consent to the occurrence of the Option Event ("Consent to Transfer"). If the Option Event involves a proposed sale of the Property to a prospective purchaser, the Agency's consent shall be conditioned upon (w) the proposed purchaser's qualification as an Eligible Household; (x) the sale of the Property at a price not to exceed the Adjusted Resale Price; (y) the proposed purchaser's execution of a Disclosure Statement substantially in the form attached hereto as Exhibit 6 or such other form or forms as may be promulgated by the Agency; and (z) the proposed purchaser's assumption of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form reasonably acceptable to Agency, or execution of an agreement substantially similar to this Agreement, within sixty (60) days after the Consent to Transfer has been delivered to Owner and recordation of such assumption agreement or substitute agreement. If the prospective purchaser (A) fails to qualify as an Eligible Household, (B) fails to execute and deliver the Disclosure Statement to the Agency, or (C) fails to execute and deliver to the Agency an assumption agreement or an agreement substantially similar to this Agreement within such sixty (60) day period, then the Consent to Transfer shall expire and the Agency may at its option notify Owner of the disqualification, thereby entitling Owner to locate another purchaser who qualifies as Eligible Household, or exercise the Option, as if no Consent to Transfer had been delivered.

(iv) Time Period for Notice. The Agency shall deliver a Consent to Transfer, if applicable, not later than sixty (60) days after the date that it receives notification of an Option Event. The Agency shall deliver a Notice of Exercise, if applicable, on or before the date which is the later to occur of the following: (i) sixty (60) days after the date that the Agency receives notification of an Option Event or (ii) thirty (30) days after a Consent to Transfer has expired. For purposes of computing commencement of the delivery periods, the Agency shall be deemed to have received notification of an Option Event on the date of delivery of a Notice of Intent to Transfer, pursuant to the terms of Section 16 below or on the date it actually receives notice of default, summons and complaint or other pleading, or other writing specifically stating that an Option Event has occurred. The Agency shall have no obligation to deliver a Notice of

Exercise or Consent to Transfer, and the applicable time period for exercise of the Option shall not commence to run, unless and until the Agency has received notification of an Option Event in the manner specified in this subsection. If there is a stay or injunction imposed by court order precluding the Agency from delivering its Consent to Transfer or Notice of Exercise within the applicable time period, then the running of such period shall cease until such time as the stay is lifted or the injunction is dissolved and the Agency has been given written notice thereof, at which time the period for delivery of a Consent to Transfer or Notice of Exercise shall again begin to run.

(v) Notice of Abandonment. If the Agency fails to deliver a Notice of Exercise or Consent to Transfer within the time periods set forth in Section 3(d)(iv), upon request by Owner, the Agency shall cause to be filed for recordation in the Office of the Recorder of Santa Clara County, a notice of abandonment, which shall declare that the provisions of the Option are no longer applicable to the Property. [Unless Owner requests recordation of notice of abandonment within thirty (30) days of the Agency's failure to deliver Notice of Exercise or Consent to Transfer, the Agency shall have no obligation to record the notice of abandonment.] Upon recordation of a notice of abandonment, the Option shall terminate and have no further force and effect. If the Agency fails to record a notice of abandonment, the sole remedy of Owner shall be to obtain a judicial order instructing prompt recordation of such a notice.

(vi) Right to Reinstatement. If the Option Event is the recordation of a notice of default, then the Agency shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor section) solely for purposes of reinstatement of any mortgage on the Property that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the Agency shall be entitled to pay all amounts of principal, interest, taxes, assessments, homeowners' association fees, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. If the Agency exercises the Option, then any and all amounts paid by the Agency pursuant to this Section shall be treated as Adjustments to the Base Resale Price for the Property, as defined in Section 5 below.

(vii) Inspection of Property. After receiving a Notice of Intent to Transfer or delivering a Notice of Exercise, the Agency shall be entitled to inspect the Property one or more times prior to the close of escrow to determine the amount of any Adjustments to the Base Resale Price. Before inspecting the Property, the Agency shall give Owner not less than forty-eight (48) hours' written notice of the date, time and expected duration of the inspection. The inspection shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding City holidays, unless the Parties mutually agree in writing to another date and time. Owner shall make the Property available for inspection on the date and at the time specified in the Agency's request for inspection, or at such other date and time mutually agreed upon in writing by the Parties.

(viii) Escrow. Promptly after delivering a Notice of Exercise, the Agency shall open an escrow account for its purchase of the Property. Close of escrow shall take place on the date that is the later to occur of the following, (a) ninety (90) days after a Notice of Exercise has been delivered, or (b) ten (10) days after Owner has performed all acts and executed

all documents required for close of escrow. Prior to the close of escrow, the Agency shall deposit into escrow with a title company of Agency's choosing, an amount equal to the Adjusted Resale Price as defined in Section 5 below and all escrow fees and closing costs to be paid by the Agency. Commissions (not to exceed six percent (6%) of the actual sales price), closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of escrow, or as may otherwise be provided by mutual agreement of the Parties. The Agency and Owner agree to perform all acts and execute all documents reasonably necessary to effectuate the close of escrow and transfer of the Property to the Agency.

(ix) Proceeds of Escrow; Removal of Exceptions to Title. Prior to close of escrow, Owner shall cause the removal of all exceptions to title to the Property that were recorded after the Effective Date with the exception of (i) taxes for the fiscal year in which the escrow for this transaction closes, which taxes shall be prorated as between Owner and Agency as of the date of close of escrow; (ii) quasi-public utility, public alley, public street easements, and rights of way of record, and (iii) such other liens, encumbrances, reservations and restrictions as may be approved in writing by Agency, which approval shall not be unreasonably withheld or conditioned ("Permitted Exceptions"). The purchase price deposited into escrow by the Agency shall be applied first to the payment of any and all Permitted Encumbrances (as defined in Section 10) recorded against the Property in order of lien priority, and thereafter to the payment of Owner's share of escrow fees and closing costs. Any amounts remaining after the purchase price has been so applied, if any, shall be paid to Owner upon the close of escrow. If the purchase price is insufficient to satisfy all liens and encumbrances recorded against the Property, the Owner shall deposit into escrow such additional sums as may be required to remove said liens and encumbrances. In the event that the Agency agrees to proceed with close of escrow prior to the date that Owner has caused all exceptions to title recorded after the Effective Date other than Permitted Exceptions to be removed, then Owner shall indemnify, defend and hold Agency harmless from any and all costs expenses or liabilities (including attorneys' fees) incurred or suffered by Agency that relate to such exceptions and their removal as exceptions to title to the Property.

4. Base Resale Price. Prior to adjustment pursuant to Section 5 the base resale price ("Base Resale Price") of the Property shall be the lowest of:

(a) Median Income. The original price ("Base Price") paid by Owner for acquisition of the Property pursuant to the Program, increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Area Median Income for Santa Clara County as defined in Section 1, between the Effective Date (or, in case of a sale of the Property by an Owner other than Owner set forth in this Agreement, the date the current Owner acquired the Property from the previous owner) and the date that the Agency receives notification of an Option Event;

(b) Index Price. The Base Price increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") between the Effective Date (or in the case of a sale of the Property by an Owner other than the initial Owner set forth in this

Agreement, the date the current owner acquired the Property from the previous Owner) and the date that the Agency receives notification of an Option Event; or

(c) Fair Market Value. The fair market value of the Property as determined by an appraiser selected and paid for by Owner and approved in writing by the Agency.

To compute the Base Resale Price, the Agency may use the Base Resale Price Worksheet attached as Exhibit 4 hereto, or such other form as the Agency may from time to time adopt.

5. Adjustments to Base Resale Price. Subject to the Affordable Unit Cost restriction described in subsection (d) below, the Base Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment"):

(a) Capital Improvements. An increase for capital improvements made to the Property, but only if the amount of such improvements has been previously approved in writing by the Agency after Owner has submitted original (if available, otherwise copies) written documentation of the cost to the Agency for verification. The amount of the Adjustment shall equal the original cost of any such capital improvements.

(b) Damages. A decrease by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the Agency upon Agency's exercise of its Option hereunder, including, without limitation, amounts attributed to cleaning; painting; replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures. Owner hereby covenants to, at Owner's expense, maintain the Property in substantially the same condition as in existence on the date of Agency's Notice of Exercise, reasonable wear and tear excepted.

(c) Advances by the Agency. A decrease in an amount equal to the sum of all costs advanced by the Agency for the payment of mortgages, taxes, assessments, insurance premiums, homeowner's association fees and/or associated late fees, costs, penalties, interest, attorneys' fees, pest inspections, resale inspections and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent.

(d) Adjusted Resale Price Not to Exceed Affordable Unit Cost. The Base Resale Price as adjusted, is hereinafter referred to as the "Adjusted Resale Price." Notwithstanding any other provision hereof to the contrary, in no event shall the Adjusted Resale Price exceed the Affordable Unit Cost.

6. Priority and Effectiveness of the Option.

(a) Recordation. This Agreement shall be recorded in the Office of the Recorder of the County of Santa Clara on or as soon as practicable after the Effective Date. The Option shall have priority over any subsequent sale, conveyance, transfer, lease or other disposition or encumbrance of the Property, or of any estate or interest therein, and in the event of exercise of the Option by Agency, the Agency shall take the Property subject only to

Permitted Exceptions. Except as otherwise provided in Sections 7(a) and 7(b), the exercise of the Option by the Agency at any time and from time to time shall not extinguish the Option or cause a merger of the Option into any estate or other interest in the Property, and the Option shall continue to exist and be effective with respect to the Property against any and all subsequent owners in accordance with the terms and conditions hereof.

(b) Request for Notice of Default. The Agency shall file a Request for Notice of Default, substantially in the form attached hereto as Exhibit 5, for recordation in the Office of the Recorder of the County of Santa Clara promptly upon execution of this Agreement.

7. Survival of Option Upon Transfer.

(a) In General. The Agency's right to exercise the Option shall survive any transfer of the Property by Owner. Each transferee, assignee or purchaser of the Property during the term hereof shall be required to execute an agreement substantially in the form of this Agreement, provided that the term of any such agreement shall be for the duration of the term hereof as of the date of any such transfer, assignment or sale. The Option may be exercised against the Property throughout the term hereof, regardless of whether the Property is owned, possessed or occupied by Owner or any successor, transferee, assignee, heir, executor, or administrator of Owner, regardless of household income (if applicable) including a debtor-in possession, debtor or trustee pursuant to Title 11 of the United States Code. Notwithstanding the foregoing, the Option shall not survive (i) the sale and transfer of the Property to a third party purchaser pursuant to a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure under a power of sale contained in a mortgage or deed of trust held by an institutional lender, provided that the Agency has received timely notice of such Option Event and has failed to either reinstate said mortgage or deed of trust or exercise its Option, or (ii) the recording of an instrument conveying Owner's interest in the Property to the Agency, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

(b) HUD Insured Mortgage. If Owner has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development, and a notice of default has been recorded pursuant to California Civil Code Section 2924 et seq. (or successor provisions), then this Option shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured mortgage is assigned to the Secretary.

8. Voidable Transfers. As long as the Option has not been abandoned pursuant to Section 3(d)(v), any actual or attempted sale, conveyance, transfer or other disposition of the Property, or of any estate or interest therein, in violation of the terms and conditions of this Agreement, shall be voidable at the election of the Agency.

9. Permitted Transfers. Provided that the transferee assumes, within thirty (30) days of a written request by the Agency, all of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form reasonably acceptable to Agency, or execution of an agreement substantially similar to this Agreement, the following transfers ("Permitted Transfers") of title to the Property, or of any estate or interest therein, shall not be

subject to the Agency's prior approval, shall not trigger the exercise of the Option, and shall not be considered Option Events: (a) a good-faith transfer by gift, devise or inheritance to Owner's spouse or issue; (b) a taking of title by a surviving joint tenant; (c) a court-ordered transfer of title to a spouse as part of a divorce or dissolution proceeding; (d) a transfer by Owner into an inter vivos trust in which the Owner is a beneficiary and the Owner continues to occupy the property as his/her primary residence; (e) an acquisition of title, or of any interest therein, in conjunction with marriage; or (f) any good faith transfer to an Eligible Household.

Notwithstanding any Permitted Transfer, the Option shall remain effective with respect to the Property for the duration of the term hereof.

10. Permitted Encumbrances and Refinancing. This Option shall not become exercisable as the result of Owner's encumbering the Property for the purpose of securing financing to purchase the Property pursuant to the Program, to refinance indebtedness incurred to purchase the Property pursuant to the Program, or to make necessary repairs to the Property in an amount approved by Agency pursuant to Section 5(a) ("Permitted Encumbrances"). The maximum aggregate amount of such encumbrances outstanding at any time (the "Permitted Encumbrance Amount") shall not exceed an amount equal to one hundred percent (100%) of the Base Resale Price calculated as provided in Section 4. The Permitted Encumbrance Amount shall be calculated as if the Agency had received notification of an Option Event on the earlier of (a) the date on which the deed of trust or mortgage securing the indebtedness is filed for record in the Office of the Recorder of the County of Santa Clara, or (b) the date the Agency receives Notice of Intent to Transfer pursuant to Section 3(d)(i) above. Owner hereby covenants and agrees that he/she/they shall use his/her/their reasonable best efforts to ensure that any deed of trust or other agreement encumbering the property shall include provisions providing for notice to be delivered to Agency of any default thereunder and for Agency's right to cure such default at Agency's election.

11. Obligation of Owner After Option Abandonment. If the Agency records a notice of abandonment of the Option, then the Property may be sold by Owner to a third party without restriction as to price; however, upon such sale, Owner shall pay to Agency an amount ("Agency's Share") equal to eighty-five percent (85%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price. The Agency's Share shall be paid to the Agency concurrently with close of escrow on the sale of the Property, or upon receipt by Owner of the sale price for the Property, whichever shall first occur.

12. Limits on Liability. In no event shall the Agency become liable or obligated in any manner to Owner by reason of the assignment of this Agreement or the Option, nor shall Agency be in any way liable or obligated to Owner for any failure of the Agency's assignee to consummate a purchase of the Property or to comply with the terms of this Agreement or the Option, or any escrow instructions or agreement for the purchase of the Property.

13. Insurance Proceeds and Condemnation Award. In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the Property, or, in the event of condemnation, if the proceeds thereof are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the

Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Section 3(d)(ix) had the Agency exercised its Option on the date of the destruction of condemnation valuation date shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the Agency.

14. Effective Date. The rights and obligations of the Agency and Owner set forth in this Agreement shall be effective as of the Effective Date.

15. Term of Agreement and Option. The restrictions contained herein and the Agency's option to purchase the Property shall continue until _____, 20__ [fifty-five (55) years following the date of issuance of a final certificate of occupancy for the Property].

16. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by (a) personal delivery, in which case notice shall be deemed delivered upon receipt; (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail; (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or (d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Agency: Milpitas Redevelopment Agency
455 Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director
Facsimile: (408) 586-3056

Owner: _____

17. Remedies Upon Breach.

(a) SPECIFIC PERFORMANCE. OWNER ACKNOWLEDGES THAT ANY BREACH IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL CAUSE IRREPARABLE HARM TO THE AGENCY. OWNER AGREES THAT THE AGENCY IS ENTITLED TO EQUITABLE RELIEF IN THE FORM OF SPECIFIC PERFORMANCE UPON ITS EXERCISE OF THE OPTION, AND THAT AN AWARD OF DAMAGES SHALL NOT BE ADEQUATE TO COMPENSATE THE AGENCY FOR OWNER'S FAILURE TO PERFORM ACCORDING TO THE TERMS OF THIS AGREEMENT.

(b) OTHER REMEDIES. THE PARTIES SHALL EACH HAVE ALL OF THE REMEDIES PROVIDED FOR AT LAW OR EQUITY.

18. General Provisions.

(a) ATTORNEYS' FEES. IF EITHER PARTY INITIATES LEGAL PROCEEDINGS TO INTERPRET OR ENFORCE ITS RIGHTS UNDER THIS AGREEMENT, THE PREVAILING PARTY IN SUCH ACTION SHALL BE ENTITLED TO AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS IN ADDITIONS TO ANY OTHER RECOVERY TO WHICH IT IS ENTITLED UNDER THIS AGREEMENT.

(b) No Joint Venture; No Third-Party Beneficiary. No joint venture or other partnership exists or is created between the Parties by virtue of this Agreement. Except as expressly stated herein, this Agreement does not benefit any third party.

(c) Successors; Assignment. This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns. Agency shall have the right to assign all of its rights and obligations under this Agreement without the consent of Owner.

(d) Entire Agreement; Amendment. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements with respect thereto. There are no representations, promises, agreements or other understandings between the Parties relating to the subject matter of this Agreement that are not expressed herein. This Agreement may be modified only by an instrument in writing executed by the Parties or their respective successors in interest.

(e) Survival; No Merger. All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the close of escrow of any sale of the Property and shall not be merged in any deed transferring the Property.

(f) Authority And Execution. Each Party represents and warrants that it has full power and authority to enter into this Agreement and to undertake all of its obligations hereunder, that each person executing this Agreement on its behalf is duly and validly authorized to do so.

(g) Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the remainder of this Agreement, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

(h) Waiver; Modification. No waiver or modification of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No evidence or any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this Agreement or the rights or obligations of any Party hereunder,

unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this section may not be waived except as herein set forth. A waiver or breach of any covenant, condition or provision of this Agreement shall not be deemed a waiver of any other covenant, condition or provision hereof.

(i) Construction. The section headings and captions used in this Agreement are for convenience of reference only and shall not modify, define, limit or amplify any of the terms or provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

(j) Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California.

(k) Time of the Essence. Time is of the essence in this Agreement as to each provision in which time is an element of performance.

(l) Further Assurances. Each Party will, upon reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and "delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Agreement.

(m) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

OWNER(S):

AGENCY:

MILPITAS REDEVELOPMENT AGENCY

Executive Director

Agency Counsel

State of California)

County of _____)

On _____, 20__, before me, _____, a 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)

EXHIBIT 1

Legal Description

EXHIBIT 2
FORM: NOTICE OF INTENT TO TRANSFER

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

To: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035

Attn: Executive Director

Date: _____

Re: Notice of Intent to Transfer

Pursuant to the terms of the Resale Restriction Agreement and Option to Purchase, dated _____, the undersigned Owner(s), _____, hereby give(s) notice of his/her/their intent to transfer the property located at _____, Milpitas, California (the "Property"). Owner may be contacted at the Property or at the following address:

Owner's daytime telephone number is (____) _____

[If applicable: The proposed transfer of the Property is to the following person(s):

Name: _____

Address: _____

Telephone: (____) _____]

The proposed transfer is (check one):

- Sale
- Other

Specify: _____

Owner(s) signature(s):

EXHIBIT 3
FORM: NOTICE OF EXERCISE

Date: _____

To: _____
Owner or Transferee

Address

Re: Notice of Exercise

The Milpitas Redevelopment Agency (“Agency”) hereby gives notice that it is exercising its option to purchase the real property located at _____, Milpitas, California. The option has been granted to the Agency pursuant to the Resale Restriction Agreement and Option to Purchase between Owner and the Agency dated _____ and recorded on _____ as Instrument No. _____. [The Agency has assigned its option to purchase the real property to _____.] An escrow for the purchase will be opened with the _____

MILPITAS REDEVELOPMENT AGENCY

By: _____

Its: _____

EXHIBIT 4

BASE RESALE PRICE WORKSHEET

Date: _____
 Owner: _____
 Address: _____
 Purchase Price: _____
 Date of Purchase: _____
 Years Owned: _____ years

METHOD #1: CALCULATION BASED ON INCREASE IN MEDIAN INCOME***

Present Median Income: \$ _____ Effective Date: _____
 Family of four, County of Santa Clara
 (at time of sale of unit)

Original Median Income: \$ _____ Effective Date: _____
 Family of four, County of Santa Clara
 (at time of purchase of unit)

Amount of Increase: _____
 Family of four, County of Santa Clara
 (Present median income minus original median income)

Increase in Price: _____ x _____ x _____ = _____

Method #1 Resale Price: _____ + _____ = _____

METHOD #2: CALCULATION BASED ON INCREASE IN MEDIAN INCOME

Present CPI: _____ Effective Date: _____

Original CPI: _____ Effective Date: _____

Rate of Increase: _____ per annum

Increase in Price: _____ x _____ x _____ = _____

Method #2 Resale Price: _____ + _____ = _____

Based on the above, the base resale price as of this date, _____, is: _____

By: _____

EXHIBIT 5
REQUEST FOR NOTICE OF DEFAULT

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Agency Executive Director

(Space Above This Line For Recorder's Use Only)

REQUEST FOR NOTICE UNDER SECTION 2924b CIVIL CODE

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as Instrument No. _____ on _____, _____, in the Official Records of Santa Clara County, California, and describing land therein as:

executed by _____, as Trustor, in which _____ is named as Beneficiary, and _____, as Trustee, be mailed to the Milpitas Redevelopment Agency, 455 Calaveras Boulevard, Milpitas, California _____, Attn: _____.

By: _____

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

STATE OF CALIFORNIA) _____)
COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for said county and state, personally appeared _____ personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (This area for official notarial seal)

EXHIBIT 6

DISCLOSURE STATEMENT

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE AGENCY FOLLOWING AGENCY’S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN “ELIGIBLE HOUSEHOLD” AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN “AFFORDABLE HOUSING COST.”

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT UNTIL _____.
ANY SALE OF THE PROPERTY IN VIOLATION OF THE RESTRICTIONS SHALL BE VOIDABLE AT THE ELECTION OF THE AGENCY.

TO DETERMINE WHO AN ELIGIBLE HOUSEHOLD IS, AND WHAT THE ADJUSTED RESALE PRICE AND AFFORDABLE HOUSING COST ARE, YOU SHOULD CONTACT THE MILPITAS REDEVELOPMENT AGENCY.

YOU SHOULD ALSO READ THE RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE MILPITAS REDEVELOPMENT AGENCY OR FROM THE ESCROW COMPANY.

I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS.

BUYER

BUYER

Exhibit E

PHASING TIMELINE
THE DISTRICT

SITE/BUILDING	TASK/MILESTONE	EST. START DATE	EST. COMPLETION DATE
Lot 1/Building 1	· Construction Documents	June 2010 – Dec. 2010	March 2011 – Sept. 2011
	· Building Permit	March 2011 – Sept. 2011	-
	· Demolish Existing Building	April 2011 – Oct. 2011	June 2011 – Dec. 2011
	· Break Ground	July 2011 – Jan. 2012	-
	· Concrete Garage Construction	July 2011 – Jan. 2012	July 2012 – Jan. 2013
	· Wood Frame Residential Construction	July 2012 – Jan. 2013	July 2013 – Jan 2014
	· Certificate of Occupancy	July 2013 – Jan. 2014	-
Lot 3/Building 3	· Construction Documents	June 2012 – Dec. 2010	March 2013 – Sept. 2013
	· Building Permit	March 2013 – Sept. 2013	-
	· Demolish Existing Building	April 2013 – Oct. 2013	June 2013 – Dec. 2013
	· Break Ground	July 2013 – Jan. 2014	-
	· Concrete Garage Construction	July 2013 – Jan. 2014	July 2014 – Jan. 2015
	· Wood Frame Residential Construction	July 2014 – Jan. 2015	July 2015 – Jan. 2016
	· Certificate of Occupancy	July 2015 – Jan. 2016	-
Lot 2/Building 2	· Construction Documents	June 2014 – Dec. 2014	March 2015 – Sept. 2015
	· Building Permit	March 2015 – Sept. 2015	-
	· Demolish Existing Building	April 2015 – Oct. 2015	June 2015 – Dec. 2015

SITE/BUILDING	TASK/MILESTONE	EST. START DATE	EST. COMPLETION DATE
	· Break Ground	July 2015 – Jan. 2016	-
	· Concrete Garage Construction	July 2015 – Jan. 2016	July 2016 – Jan. 2017
	· Wood Frame Residential Construction	July 2016 – Jan. 2017	July 2017 – Dec. 2017
	· Certificate of Occupancy	July 2017 – Jan. 2018	-
Lot 4/Building 4	· Construction Documents	June 2015 – Dec. 2015	March 2016 – Sept. 2016
	· Building Permit	March 2016 – Sept. 2016	-
	· Demolish Existing Building	April 2016 – Oct. 2016	June 2016 – Dec. 2016
	· Break Ground	July 2016 – Jan. 2017	-
	· Concrete Garage Construction	July 2016 – Jan. 2017	July 2017 – Jan. 2017
	· Wood Frame Residential Construction	July 2017 – Jan. 2018	July 2018 – Dec. 2018
	· Certificate of Occupancy	July 2018 – Jan. 2019	-
Lots 5 and 6/Buildings 5 and 6	· Construction Documents	June 2016 – Dec. 2016	March 2017 – Sept. 2017
	· Building Permit	March 2017 – Sept. 2017	-
	· Demolish Existing Building	April 2017 – Oct. 2017	June 2018 – Dec. 2018
	· Break Ground	July 2017 – Jan. 2018	-
	· Concrete Garage Construction	July 2017 – Jan. 2018	July 2017 – Jan. 2018
	· Wood Frame Residential Construction	July 2018 – Jan. 2019	July 2018 – Jan. 2019
	· Certificate of Occupancy	July 2019 – Jan. 2020	-
Lots 7 and 8/Buildings 7 and 8	· Construction Documents	June 2018 – Dec. 2018	March 2019 – Sept. 2019
	· Building Permit	March 2019 – Sept. 2019	-

Exhibit E-2

SITE/BUILDING	TASK/MILESTONE	EST. START DATE	EST. COMPLETION DATE
	· Demolish Existing Building	April 2019 – Oct. 2019	June 2019 – Dec. 2019
	· Break Ground	July 2019 – Jan. 2020	-
	· Concrete Garage Construction	July 2019 – Jan. 2020	July 2020 – Jan. 2021
	· Wood Frame Residential Construction	July 2020 – Jan. 2021	July 2021 – Dec. 2021
	· Certificate of Occupancy	July 2021 – Jan. 2022	-

It is understood that the foregoing Phasing Timeline is subject to all of the terms and conditions of the text of this Agreement, including without limitation Section 11.2. The summary of the items of performance in this Schedule is not intended to supersede or modify the more complete description in the text. In the event of any conflict or inconsistency between this Phasing Timeline and the text of this Agreement, the text shall govern.

Exhibit F

**Exhibit F-1
ELIGIBLE COSTS**

1. Off-site Infrastructure
2. Payment for off-site infrastructure in the form of development fees:
 - A. Transit Area Development Impact Fee (97%);
 - B. Sewer Connection Fee (95%)
 - C. Water Connection Fee (95%)
 - D. Storm Drainage Fee (95%)
 - E. Milpitas Unified School District (95%)
3. Restricted Unit Rental Payments from the Low and Moderate Income Housing Fund.

Exhibit F

Exhibit F-2
FORM OF PAYMENT REQUEST
(Attach form of Payment Request)

Integral Communities McCandless LLC (the “Developer”), hereby requests reimbursement of Eligible Costs (as further described on Attachment A attached hereto) pursuant to Article IV of that certain Owner Participation Agreement dated as of August 3, 2010 (the “OPA”) by and between the Developer, and the Redevelopment Agency of the City of Milpitas (the “Agency”). Capitalized undefined terms shall have the meanings ascribed thereto in the OPA.

In connection with this Payment Request, the undersigned hereby represents and warrants to the Agency:

1. The undersigned is a representative of the Developer, qualified to execute this request for payment on behalf of the Developer and knowledgeable as to the matters set forth herein.
2. The true and correct costs that are Eligible Costs for which payment is requested are set forth in Attachment A and are further described and verified in the contracts, invoices, receipts, worksheets and/or other evidence of Eligible Costs submitted by Developer to the Agency herewith as Attachment B.
3. Solely with respect to any Eligible Costs related to improvement to be owned by the Agency, City of Milpitas and/or other public agency, there has not been filed with or served upon the Developer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive the payment requested for such public improvements herein (other than materialmen’s or mechanics’ liens accruing by operation of law) which (i) has not been released (ii) will not be released simultaneously with the payment of such obligation, or (iii) is not covered by a bond posted by Developer in accordance with Section 3.21 of the OPA. Copies of lien releases and/or any bonds posted by Developer as required in accordance with Section 3.21 of the OPA for all work for which payment is requested hereunder are attached hereto as Attachment C.

The undersigned hereby declares under penalty of perjury that the above representations and warranties are true and correct.

Please pay the following amounts requested pursuant hereto to [name of payee] at [address or bank account number].

[Payee]
[address or wire information]
[amounts]

Date:

Integral Communities McCandless, LLC a
California limited liability company

By _____
Its _____

ATTACHMENT A

Improvements/Fees
(specify fee, improvement and/or
affordable housing)

Phase/Completion Date

Costs That are Eligible
Costs

Total Eligible Costs to be Paid:

ATTACHMENT B

Evidence of Eligible Costs

Execution Copy

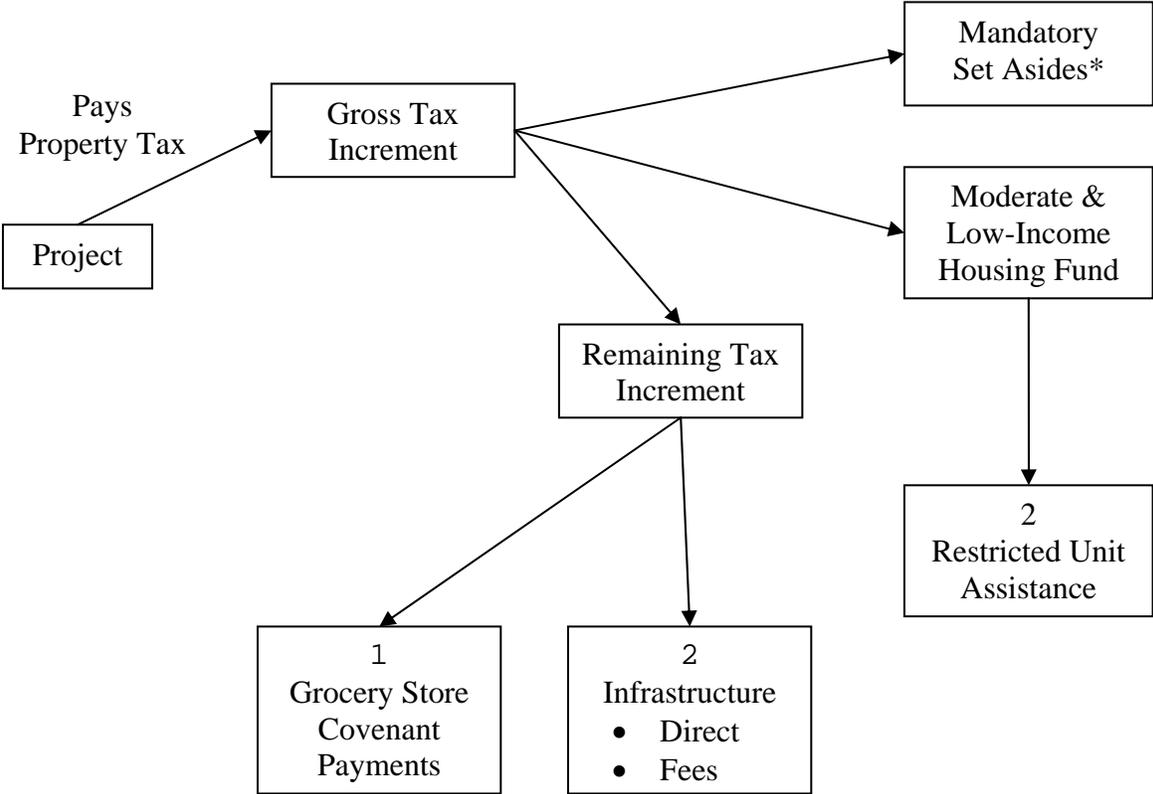
ATTACHMENT C

Lien Releases/Bonds

Exhibit F-Attachment C

Exhibit G

CONCEPTUAL FLOW DIAGRAM OF FINANCING
(Attach Diagram)



* Except for Moderate and Low-Income Housing Fund