*RA7

RESOLUTION NO. _____

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS APPROVING AMENDMENTS NO. 2 TO THE REGULATORY AGREEMENT AND OWNER PARTICIPATION AGREEMENT WITH WESTERN PACIFIC HOUSING, INC.

WHEREAS, Agency and Western Pacific entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated as of September 8, 2006 (the "Original Regulatory Agreement") with respect to certain real property located in Milpitas, California, and described in the Exhibit A to the Original Regulatory Agreement (the "Property"); and

WHEREAS, the Redevelopment Agency of the City of Milpitas ("Agency") and Western Pacific Housing, Inc. ("Western Pacific") entered into an Owner Participation Agreement dated September 8, 2006 (the "Original OPA") with respect to certain real property located in Milpitas, California, described in Exhibit A to the Original OPA (the "Property"); and

WHEREAS, pursuant to the Original Regulatory Agreement and Original OPA, twenty (20) of the residential units to be constructed on the Property were designated for sale to qualified moderate income purchasers (the "Moderate Affordable Units"); and

WHEREAS, as the result of current real estate market conditions and resulting lack of sufficient qualified moderate income purchasers as of the reference date, none of the Moderate Affordable Units have been sold and deeded to qualified moderate income purchasers as of the date of this Resolution; and

WHEREAS, Agency and Western Pacific have attempted to increase the marketability of the Moderate Affordable Units in order to fulfill the regional housing goals of the City of Milpitas by creating an equity sharing program pursuant to Health and Safety Code Section 33334.3(f)(1)(B). The equity sharing program, which was the first amendment to the Original Regulatory Agreement and Original OPA, has failed to entice any buyers for the moderate units. Given the current state of the housing market, selling the below market-rate moderate units, even with the equity sharing program, seems unlikely in the near future; and

WHEREAS, construction of the improvements described in Exhibit A to Amendment No. 2 of the Owner Participation Agreement by and between the Redevelopment Agency of the City of Milpitas and Western Pacific Housing, Inc. would further the goals of the Agency to eliminate blight in the Milpitas Redevelopment Project Area No. 1 and increase the economic viability of the area immediately surrounding the Property; and

WHEREAS, the Agency has determined that amending the Original OPA and the Original Regulatory Agreement on the terms and conditions set forth in Amendments No. 2 will assist the Agency in effectuating the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 and is in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and are in accord with the public purposes and provisions of all applicable federal, state, and local laws and requirements, including without limitation State Redevelopment laws.

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

1. The Board has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The development of the Property in accordance with the amendments to the Original OPA and Original Regulatory Agreement would assist in the elimination of blight in the Project Area, further the goals of the Redevelopment Plan, and be consistent with the implementation plan adopted in connection therewith. The development of the Property pursuant to the amendments

to the Original OPA and Original Regulatory Agreement are consistent with the Milpitas General Plan, the Milpitas Zoning Ordinance and the Transit Area Specific Plan.

3. The improvements specified in the Amendments No. 2 are part of the streetscape improvements called for in the Mid-Town Specific Plan and contemplated and analyzed in the Mid-Town Specific Plan EIR dated January 2002 (SCH No. 2000092027). Furthermore, pursuant to Article 11, Section 15162(b) of the California Environmental Quality Act, no further environmental documentation is required as to the streetscape improvements, since the circumstances and nature of the actions contemplated with these improvements were considered during the review and circulation of the Mid-Town Specific Plan EIR, and no new information or circumstances have arisen with regards to the proposed streetscape improvements that were not previously considered in the previous environmental impact report.

   Furthermore, pursuant to Article 11, Section 15168 of the California Environmental Quality Act (Program EIR), no further environmental documentation is required as to the streetscape improvements specified in the Amendments No. 2, since the streetscape improvements were part of the large project contemplated in the Mid-Town Specific Plan EIR dated January 2002 (SCH No. 2000092027) and there are no new effects that were not considered in that EIR arising from the specified streetscape improvements listed in the Amendments No. 2.

4. The Executive Director is authorized to execute Amendments No. 2 to the Regulatory Agreement and the Owner Participation Agreement with Western Pacific Housing, Inc., attached hereto as Exhibit A.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, Agency Secretary

APPROVED:

_____
Robert Livengood, Chair

APPROVED AS TO FORM:

_____
Michael J. Ogaz, Agency Counsel

EXHIBIT A

AMENDMENT NO. 2 TO OWNER PARTICIPATION AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS AND WESTERN PACIFIC HOUSING, INC.

This Amendment to Owner Participation Agreement ("Amendment"), dated for reference purposes only as of November 16, 2010 (the "Reference Date"), is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ("Agency"), and Western Pacific Housing, Inc. ("Developer").

RECITALS

A. Agency and Developer entered into that certain Owner Participation Agreement by and between the Redevelopment Agency of the City of Milpitas and Western Pacific Housing, Inc. dated as of September 8, 2006 (the "Original OPA") with respect to certain real property located in Milpitas, California, and described in the Original OPA in Exhibit A (the "Property").

B. Pursuant to the Original OPA, twenty (20) of the residential units to be constructed on the Property were designated for sale to qualified Moderate Income purchasers (the "Moderate Affordable Units").

C. As the result of current real estate market conditions and resulting lack of sufficient qualified Moderate Income purchasers as of the Reference Date, none of the Moderate Affordable Units have been sold and deeded to qualified Moderate Income purchasers as of the Reference Date.

D. Agency and Developer have attempted to increase the marketability of the Moderate Affordable Units in order to fulfill the regional housing goals of the City of Milpitas by creating an equity sharing program. The equity sharing program, which was the subject of the first amendment to the Original OPA ("Amendment 1"), has failed to entice any buyers for the Moderate Affordable Units. Given the current state of the housing market, selling the below market rate Moderate Affordable Units, even with the equity sharing program, seems unlikely in the near future.

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

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, Agency and Developer agree as follows:

1. Effective Date; Defined Terms. As used in this Amendment, "Amendment Effective Date" means the date that five (5) copies of this Amendment have been fully executed by Agency and Developer. Upon execution of five (5) copies of this Amendment, Developer shall deliver such executed copies to the Agency for processing and signature by the Agency, as appropriate, so that each

party signing an Amendment will receive a fully-executed original of such Amendment. As used in the Original Agreement, "Effective Date" means the date the governing body of the Agency approved the Original OPA and the Original OPA was executed by the last of Developer or Agency. From and after the Amendment Effective Date, except as otherwise provided in this Amendment, the terms "Agreement" or "OPA" as used in the Original OPA or this Amendment shall mean the Original OPA as amended by this Amendment. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original OPA.

2. Amendment 1 is deleted in its entirety.

3. Paragraph 3.2 is deleted in its entirety and amended to read as follows:

3.2 Scope of Development. Developer shall develop the 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 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**").

The Project consists of the following: (i) the design, development and construction on the Property of a residential condominium project consisting of 147 townhouses and including at least nine (9) units (the "**Restricted Units**") which shall be sold at an affordable cost pursuant to the terms and conditions set forth in Section 3.3 hereof and a Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit D ("Regulatory Agreement") which the Parties shall execute concurrently with the execution of this Agreement and which shall be recorded in the Official Records of Santa Clara County on the date that Developer acquires the Property.

4. Paragraph 3.3 is deleted in its entirety and amended to read as follows:

3.3 Affordable Units. Developer covenants and agrees for itself, its successors and assigns that no fewer than nine (9) of the units developed within the Project will be made available to households of Very Low-Income as defined in the Regulatory Agreement. The Restricted Units shall be provided at the locations within the Project depicted on Exhibit B of the Regulatory Agreement (the "**Location Plan**"). Developer acknowledges that the purpose of the Location Plan is to ensure that the Restricted Units are not geographically segregated or concentrated within the Project. Developer shall comply with the terms and conditions of the Regulatory Agreement, including without limitation, the provisions thereof relating to the sale price, bedroom number and location of the Restricted Units and the requirement that the size and amenities of the Restricted Units shall be generally comparable to that of the other units in the Project. Developer shall market the Restricted Units no later than concurrently with Developer's marketing of the market-rate Project units.

5. In Lieu Services. Developer agrees to construct the improvements set forth in Exhibit A to this Amendment in lieu of selling twenty (20) residential units at the Project to households whose

Gross Income does not exceed Moderate-Income ("**In Lieu Services**"). The In Lieu Services shall comply with the details and requirements in the April 2007 Main Street Plan Line Study Report, which is hereby incorporated by reference. The total cost incurred by the Developer for the In Lieu Services including design, permits, bonding, plan check, construction, inspection and repairs shall not exceed Six Hundred, Seventy Thousand Dollars ($670,000.00) ("Developer Cost Limit"). The Developer shall submit for City approval an Engineer's Estimate of Probable Cost ("Cost Estimate") once the improvement plans have been approved by the City but prior to any construction of the improvements. Any construction elements exceeding ten percent (10%) of the Cost Estimate shall be approved by the City Engineer prior to construction of said elements. Developer shall post a performance bond for the In Lieu Services within thirty (30) days of the Amendment Effective Date. The In Lieu Services shall be completed by August 31, 2011, extensions to the completion date may be granted at the sole and reasonable discretion of the City Engineer. If the cost of the In Lieu Services exceeds the Developer Cost Limit, the City shall have the option to pay for the additional costs or to reduce the scope of the In Lieu Services.

6. Sale of Units. As of the Amendment Effective Date, Developer shall be entitled to market and sell the twenty (20) residential units that were originally designated as Moderate Affordable Units to all buyers without regard to such buyers' income levels.

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

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By:_____
Thomas C. Williams, Executive Director

ATTEST:

_____
Mary Lavelle, Agency Secretary

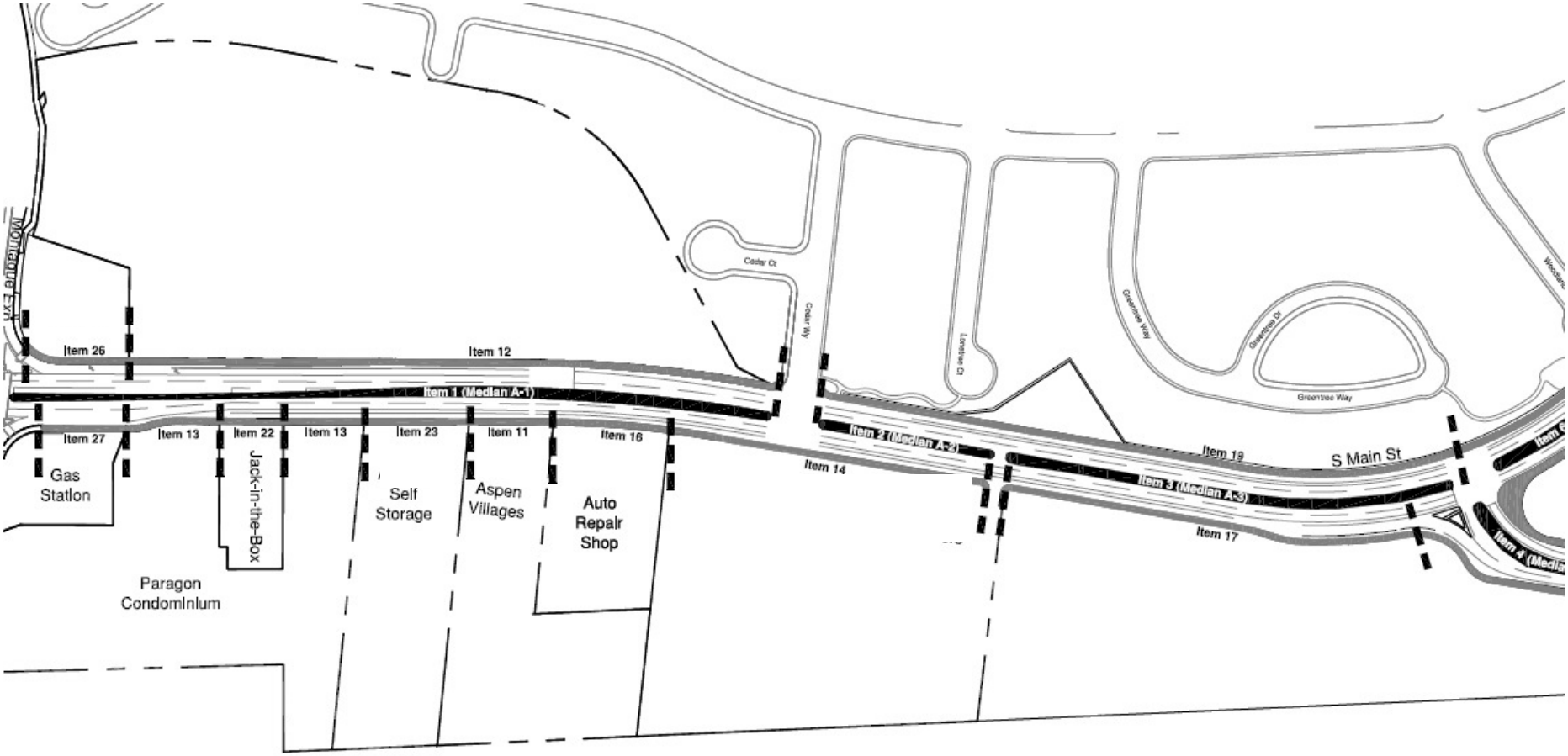
APPROVED AS TO FORM
:

_____
Michael J. Ogaz, Agency Counsel

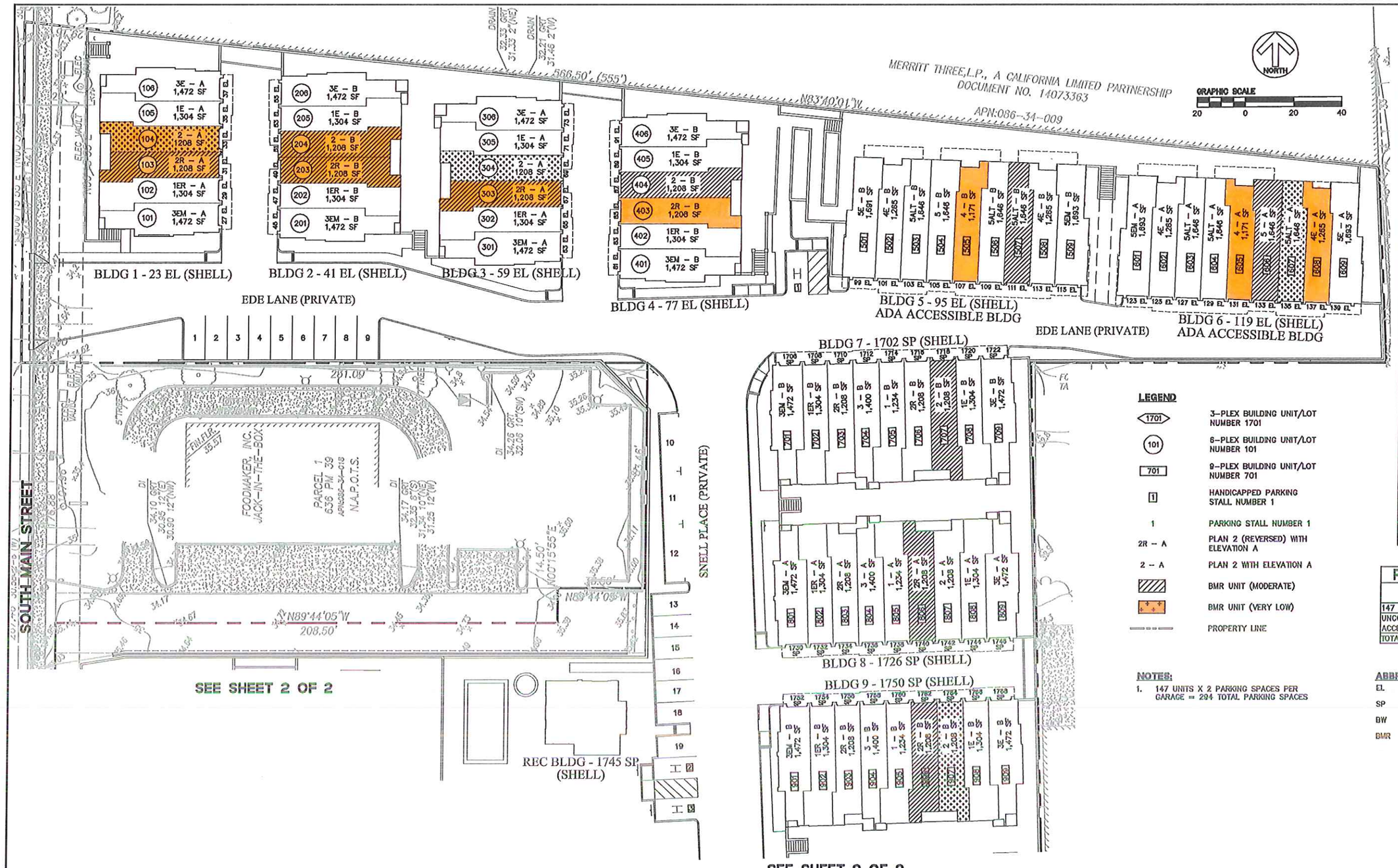
WESTERN PACIFIC HOUSING, INC.

By:_____
Rich Ambrosini, its Vice President

Exhibit A



In Lieu Services: Construction of South Main Street median islands A-1 and A-2 (shown above) with the specific improvements and necessary infrastructure to support the improvements detailed in the April 2007 Main Street Plan Line Study Report.



UNIT TYPE SUMMARY

6-PLEX BUILDING	
PLAN AND ELEVATION	AMOUNT
3EM – A	3
3EM – B	3
1E – A	6
1E – B	6
2 – A	6
2 – B	6
3E – A	3
3E – B	3
TOTAL 6-PLEX	36

9-PLEX BUILDING	
PLAN AND ELEVATION	AMOUNT
3EM – A	5
3EM – B	5
1E – A	10
1E – B	10
2 – A	15
2 – B	15
3E – A	5
3E – B	5
3 – A	5
3 – B	5
1 – A	5
1 – B	5
TOTAL 9-PLEX	90

9-PLEX SB1025 BUILDING	
PLAN AND ELEVATION	AMOUNT
5E – A	1
5E – B	1
5EM – A	1
5EM – B	1
5 – A	1
5 – B	1
5 ALT – A	3
5 ALT – B	3
4E – A	2
4E – B	2
4 – A	1
4 – B	1
TOTAL 9-PLEX SB 1025	18

3-PLEX BUILDING	
PLAN AND ELEVATION	AMOUNT
3EM – A	1
1E – A	1
2E – A	1
TOTAL 3-PLEX	3
TOTAL OVERALL UNITS	147

PARKING PLAN SUMMARY

PARKING TYPE		NUMBER OF STALLS
147 RESIDENTIAL UNITS, SEE NOTE 1		294
UNCOVERED VISITOR PARKING	39	
ACCESSIBLE PARKING	3	
TOTAL VISITOR PARKING		42

NOTES:

1. 147 UNITS X 2 PARKING SPACES PER GARAGE = 294 TOTAL PARKING SPACES

ABBREVIATIONS

EL	EDE LANE
SP	SNELL PLACE
BW	BETTENCOURT WAY
BMR	BELOW MARKET RATE

BKF
ENGINEERS / SURVEYORS / PLANNERS
980 9TH STREET, SUITE 1770
SACRAMENTO, CA 95814
(916) 558-6000 PH/(916) 558-6699 FAX

THE PARAGON CONDOS
TRACT NO. 9775
OVERALL SITE PLAN

MILPITAS SANTA CLARA COUNTY CALIFORNIA

Date 9/28/09
Scale 1" = 20'
Design JTM
Drawn GAR
Approved JL
Job No 055142.11

Revisions

Num.	Date	By	Description	City Engr. Aprv.	Date

CITY OF MILPITAS
ENGINEERING DIVISION

Approved:
City Engineer Date
Any changes to public improvements shall be approved by the City Engineer
Recommended for approval:
Fire Dept. _____ Date: _____
Engineering _____ Date: _____

Project No. 8204
Drawing No. 8 – 1085
E.P. No.
Sheet 1 of 2

AMENDMENT NO. 2 TO REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This Amendment to Regulatory Agreement and Declaration of Restrictive Covenants ("Amendment"), dated for reference purposes only as of November 16, 2010 (the "Reference Date"), is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ("Agency"), and WESTERN PACIFIC HOUSING, INC. ("Developer").

RECITALS

A. Agency and Developer entered into that certain Regulatory Agreement and Declaration of Restrictive Covenants dated as of September 8, 2006 (the "Original Regulatory Agreement") with respect to certain real property located in Milpitas, California, and described in the Original Regulatory Agreement in Exhibit A (the "Property").

B. Pursuant to the Original Regulatory Agreement, twenty (20) of the residential units to be constructed on the Property were designated for sale to qualified Moderate Income purchasers (the "Moderate Affordable Units").

C. As the result of current real estate market conditions and resulting lack of sufficient qualified Moderate Income purchasers as of the Reference Date, none of the Moderate Affordable Units have been sold and deeded to qualified Moderate Income purchasers as of the Reference Date.

D. Agency and Developer have attempted to increase the marketability of the Moderate Affordable Units in order to fulfill the regional housing goals of the City of Milpitas by creating an equity sharing program. The equity sharing program, which was the subject of the first amendment to the Original Regulatory Agreement ("Amendment 1"), has failed to entice any buyers for the Moderate Affordable Units. Given the current state of the housing market, selling the below market rate Moderate Affordable Units, even with the equity sharing program, seems unlikely in the near future.

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

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, Agency and Developer agree as follows:

1. Effective Date; Defined Terms. As used in this Amendment, "Amendment Effective Date" means the date that five (5) copies of this Amendment have been fully executed by Agency and Developer. Upon execution of five (5) copies of this Amendment, Developer shall deliver such executed copies to the Agency for processing and signature by the Agency, as appropriate, so that each party signing an Amendment will receive a fully-executed original of such Amendment. As used in the Original Agreement, "Effective Date" means the date the governing body of the Agency approved the Original Regulatory Agreement and the Original Regulatory Agreement was executed by the last of Developer or Agency. From and after the Amendment Effective Date, except as otherwise provided in

this Amendment, the terms "Agreement" or "Regulatory Agreement" as used in the Original Regulatory Agreement or this Amendment shall mean the Original Regulatory Agreement as amended by this Amendment. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original Regulatory Agreement.

2. Amendment 1 is deleted in its entirety.

3. Paragraph 3 is deleted in its entirety and amended to read as follows:

3. Sale of Restricted Units. Developer shall sell nine (9) of the dwelling units in the Project ("Restricted Units") in accordance with all of the following terms and conditions:

(i) The Restricted Units shall be sold only to Eligible Buyers who have been pre-qualified by the Agency or its designee.

(ii) Reserved

(iii) The Restricted Units shall be sold at a price not in excess of the Maximum Initial Sale Price to Eligible Buyers whose household Gross Income does not exceed Very Low-Income.

(iv) The Restricted Units shall be dispersed throughout the Project in the locations shown on the Location approved by the Agency's Executive Director and attached to this Amendment as Exhibit B.

(v) The Restricted Units shall be of the same general design as the other units in the Project and shall be comparable to such units in size, amenities and quality of construction.

(vi) The Restricted Units shall be three-bedroom units.

(vii) In connection with the sale of each Restricted Unit, Developer shall require the purchaser to execute a Resale Restriction Agreement and Option to Purchase ("Resale Agreement") in a form provided by Agency and shall cause such Resale Agreement to be recorded in the Official Records of Santa Clara County concurrently with the recordation of the grant deed conveying title of the Restricted Unit. The Resale Agreement shall provide that the Restricted Unit may only be sold to Eligible Households at an affordable price as specified in the Resale Agreement, and will further provide that the Agency shall have a right of first offer to purchase the Restricted Unit and an option to purchase such unit upon the occurrence of specified triggering events.

4. <u>In Lieu Services</u>. Developer agrees to construct the improvements set forth in Exhibit A to Amendment No. 2 of the Owner Participation Agreement by and between the Redevelopment Agency of the City of Milpitas and Western Pacific Housing, Inc. in lieu of selling twenty (20) residential units at the Project to households whose Gross Income does not exceed Moderate-Income ("In Lieu Services"). The In Lieu Services shall comply with the details and requirements in the April 2007 Main Street Plan Line Study Report, which is hereby incorporated by reference. The total cost incurred by the Developer for the In Lieu Services including design, bonding, permits, plan check, construction,

inspection and repairs shall not exceed Six Hundred, Seventy Thousand Dollars ($670,000.00) ("Developer Cost Limit"). The Developer shall submit for City approval an Engineer's Estimate of Probable Cost ("Cost Estimate") once the improvement plans for the In Lieu Services have been approved by the City but prior to any construction of the improvements. Any construction elements exceeding ten percent (10%) of the Cost Estimate shall be approved by the City Engineer prior to construction of said elements. Developer shall post a performance bond for the In Lieu Services within thirty (30) days of the Amendment Effective Date. The In Lieu Services shall be completed by August 31, 2011, and extensions to the completion date may be granted at the sole and reasonable discretion of the City Engineer. If the cost of the In Lieu Services exceeds the Developer Cost Limit, the City shall have the option to pay for the additional cost or to reduce the scope of the In Lieu Services.

5. Sale of Units. As of the Amendment Effective Date, Developer shall be entitled to market and sell the twenty (20) residential units that were originally designated as Moderate Affordable Units to all buyers without regard to such buyers' income levels.

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

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By:_____
Thomas C. Williams, Executive Director

ATTEST:

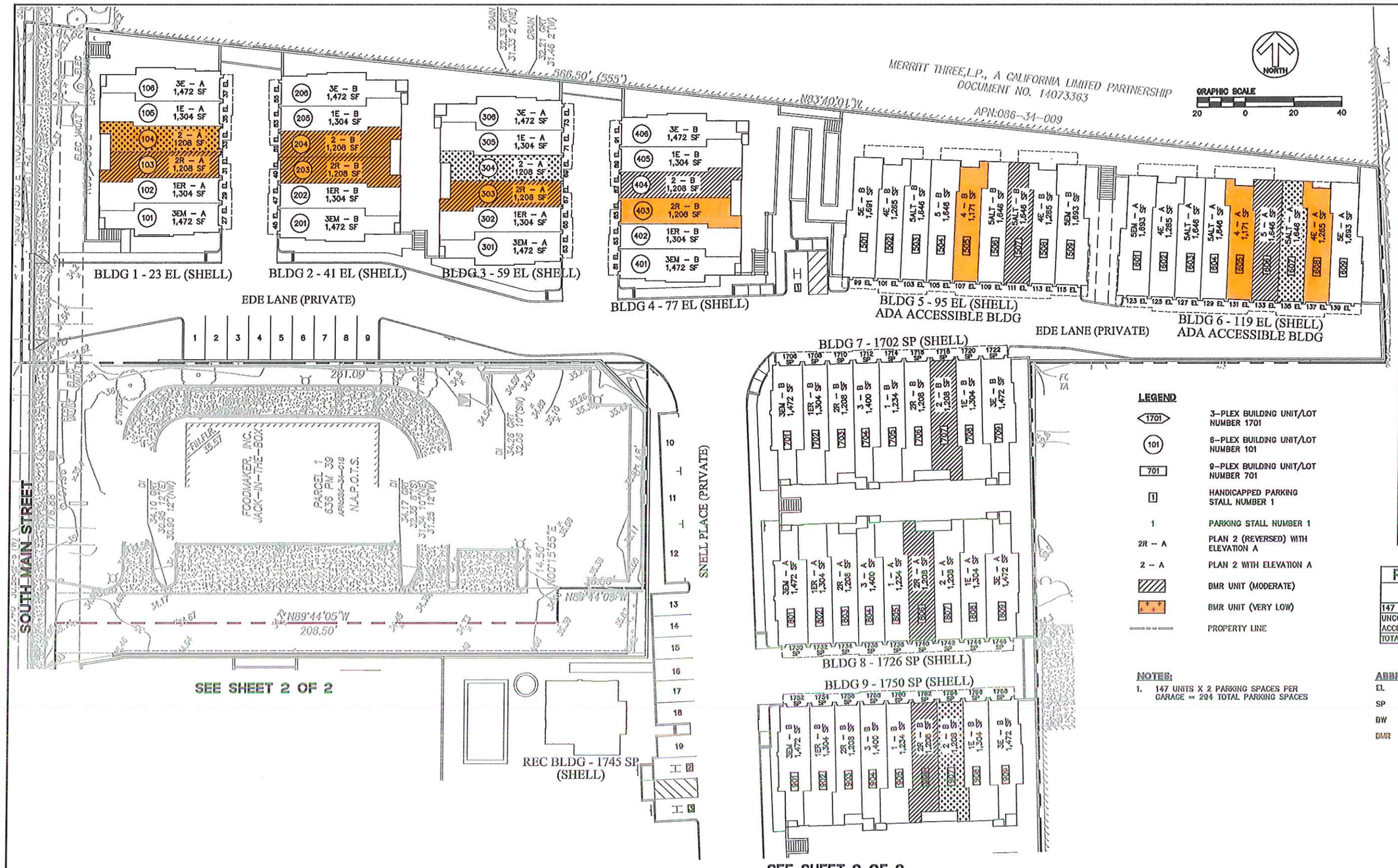
_____
Mary Lavelle, Agency Secretary

Approved as to Form:

_____
Michael J. Ogaz, Agency Counsel

WESTERN PACIFIC HOUSING, INC.

By:_____
Rich Ambrosini, its Vice President



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3EM – B	3
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TOTAL 6-PLEX	36

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3 – B	5
1 – A	5
1 – B	5
TOTAL 9-PLEX	90

9-PLEX SB1025 BUILDING	
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5EM – A	1
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3EM – A	1
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TOTAL 3-PLEX	3
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THE PARAGON CONDOS
TRACT NO. 9775
OVERALL SITE PLAN

MILPITAS SANTA CLARA COUNTY CALIFORNIA

Date 9/28/09
Scale 1" = 20'
Design JTM
Drawn GAR
Approved JL
Job No 055142.11

Revisions

Num.	Date	By	Description	City Engr. Aprv.	Date

CITY OF MILPITAS
ENGINEERING DIVISION

Approved:
City Engineer Date
Any changes to public improvements shall be approved by the City Engineer
Recommended for approval:
Fire Dept. _____ Date: _____
Engineering _____ Date: _____

Project No. 8204
Drawing No. 8 – 1085
E.P. No.
Sheet 1 of 2