

RESOLUTION NO. HA \_\_\_/\_\_\_/SA\_\_\_

**A JOINT RESOLUTION OF THE CITY OF MILPITAS HOUSING AUTHORITY, THE CITY COUNCIL OF THE CITY OF MILPITAS, AND THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS (1) APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT FOR THE INITIAL DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE REAL PROPERTY OF THE MILPITAS HOUSING AUTHORITY LOCATED AT 1504-1620 SOUTH MAIN STREET IN MILPITAS, CALIFORNIA, (2) APPROVING A SUMMARY REPORT REQUIRED BY HEALTH AND SAFETY CODE SECTION 33433, (3) APPROVING A FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT AND THE SALE OF SUCH REAL PROPERTY TO SOUTH MAIN SENIOR LIFESTYLES, LLC, AND (4) ADOPTING FINDINGS IN CONNECTION WITH SUCH SALE**

**WHEREAS**, the Redevelopment Agency of the City of Milpitas ("RDA") acquired approximately 5.94 acres of land located at 1504-1620 South Main Street (Santa Clara County Assessor's Parcel Nos. 086-22-027, 086-22-028, 086-22-046, 086-22-047, and 086-22-048) (collectively referred to herein as the "Property") located within Milpitas Redevelopment Project Area No. 1 (the "Project Area") and governed by the redevelopment plan for the Project Area (the "Redevelopment Plan") and the Midtown Specific Plan (the "Specific Plan"), both as adopted by the City Council (the "City Council") of the City of Milpitas (the "City"); and

**WHEREAS**, the RDA purchased the Property for redevelopment, including the provision of affordable housing, in accordance with the terms of the Redevelopment Plan, the Specific Plan, the City's General Plan, and the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (the "CRL") using tax increment revenues deposited in its Low and Moderate Income Housing Fund established under the CRL (the "Housing Fund"); and

**WHEREAS**, to accomplish these redevelopment and affordable housing purposes, the RDA and South Main Street Lifestyles, LLC (the "Developer") entered into a Disposition and Development Agreement dated August 18, 2009, as amended by a First Amendment dated October 18, 2011 (collectively, the "Initial DDA") providing for disposition of the Property to the Developer and development thereon by the Developer of a two-phased residential complex containing approximately three hundred eighty-seven (387) residential units (including specified affordable units), a new City street and other City rights-of-way, common use facilities, parking, landscaping and related on- and off-site improvements (the "Initial Project"); and

**WHEREAS**, pursuant to ABx1 26 enacted effective June 28, 2011, as clarified and amended by AB 1484 effective June 27, 2012 (collectively, the "Redevelopment Dissolution Law");

1. The RDA, together with every redevelopment agency in California, was dissolved as of February 1, 2012; and

2. The City of Milpitas Housing Authority (the "Housing Authority"), the City Council, and the RDA adopted joint resolution HA3/8151/RA426 on January 4, 2012, whereby (a) the City, acting in a separate legal capacity and as a separate legal entity, elected to be the successor agency (the "Successor Agency") to the dissolved RDA for purposes of paying the obligations, unwinding the affairs, and liquidating specified assets of the dissolved RDA; and (b) the City selected the Housing Authority and the Housing Authority elected to take on the responsibility of performing the housing functions of the dissolved RDA; and

**WHEREAS**, the Property constitutes a "housing asset" of the RDA that transferred to the Housing Authority pursuant to the provisions of Health and Safety Code Section 34176, as confirmed by:

1. A letter of August 31, 2012 from the California Department of Finance to the Housing Authority;

2. The Housing Fund Due Diligence Review report submitted by the County of Santa Clara Finance Agency dated October 2, 2012, as prepared in accordance with Health and Safety Code Section 34179.5; and

3. The Agreed Upon Procedures report submitted by the County of Santa Clara Finance Agency dated October 10, 2012, as prepared in accordance with Health and Safety Code Section 34182(a); and

**WHEREAS**, within the meaning of Health and Safety Code Section 34176, the Initial DDA constitutes:

1. A "housing obligation" and a "housing duty" of the dissolved RDA in that it commits the RDA to convey the Property (which is a housing asset of the dissolved RDA, as described in the preceding recital) to the Developer and to provide specified financial assistance from its Housing Fund to the Developer; and

2. A "housing asset" of the dissolved RDA, in that the Initial DDA includes an express obligation of the Developer to develop and operate specified affordable housing units in the Initial Project for the benefit of the dissolved RDA's affordable housing program; and

3. A "housing function" of the dissolved RDA, in that the Initial DDA directs the RDA to perform various functions and actions with respect to the above described housing obligations, duties, and assets in order to facilitate development of the Initial Project on the Property and provision of specified affordable housing units using moneys from the Housing Fund; and

**WHEREAS**, for the foregoing reasons, and in accordance with the requirements of Health and Safety Code Section 34177(g) calling for Successor Agency to transfer the housing functions and assets of the dissolved RDA to the Housing Authority, the Successor Agency and the Housing Authority desire to enter into an Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), substantially in the form on file with the City Clerk, the Housing Authority Secretary, and the Successor Agency Secretary, whereby the Successor Agency will assign and delegate its rights and obligations under the Initial DDA to the Housing Authority and the Housing Authority will accept such assignment and delegation; and

**WHEREAS**, to better reflect current market, financial, statutory and planning circumstances, and to enable feasible development of the Property in furtherance of the CRL, the Redevelopment Plan, the Specific Plan, the RDA's most recent five-year Implementation Plan (the "Implementation Plan"), and the California Housing Authorities Law (Health and Safety Code Section 34200 *et seq.*) (the "Housing Authorities Law") as applicable to the Housing Authority, the Housing Authority and the Developer now desire to modify the terms of the Initial DDA in the form of a First Amended and Restated Disposition and Development Agreement (the "Amended DDA"), substantially in the form on file with the City Clerk and the Housing Authority Secretary; and

**WHEREAS**, included within the Amended DDA are certain modifications to the Initial Project (as so modified and as further described below and in the Amended DDA, the "Project"); and

**WHEREAS**, the Project will include the following two sequential phases:

1. A first phase residential development (the "Phase One Development") consisting of a one hundred ninety-nine (199) unit "continuum of care" senior (62 years of age and older) housing rental development and related amenities, parking, landscaping, and public street, utility and infrastructure improvements; and

2. A second phase residential development (the "Phase Two Development") consisting of one hundred ninety (190) apartment units for active, independent seniors (62 years of age and older), and related amenities, parking, landscaping and public street, utility, and infrastructure improvements; and

**WHEREAS**, the Phase One Development will include ten (10) residential units available at affordable housing cost to income-qualified very low income households, and the Phase Two Development will include thirty-eight (38) residential units available at affordable housing cost to income-qualified very low income households; and

**WHEREAS**, in connection with adoption of the Specific Plan, on March 19, 2002, the City Council certified a Program Environmental Impact Report (the "EIR") for the Specific Plan (SCH #2000092027) in accordance with the requirements of the California Environmental Quality Act and the applicable State and local implementing guidelines ("CEQA"); and

**WHEREAS**, based on an environmental assessment for the Amended DDA as summarized in the staff report accompanying this Resolution (the "Staff Report"), it has been determined that the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA are within the scope of the program of activities for which the environmental impacts were adequately addressed by the EIR, and that none of the events specified in Public Resources Code Section 21166 or State CEQA Guidelines Section 15162 have occurred that would require a supplemental or subsequent environmental impact report; and

**WHEREAS**, as a result of these determinations:

1. No new environmental document is required pursuant to CEQA in connection with the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA, as provided in Section 15168(c)(2) of the State CEQA Guidelines; and

2. The Amended DDA and the disposition and development of the Property in accordance with the Amended DDA are exempt from CEQA pursuant to California Government Code Section 65457, dealing with residential projects consistent with a specific plan that was the subject of an environmental impact report certified after January 1, 1980; and

**WHEREAS**, the Housing Authority and the City Council acknowledge and agree that, in connection with consideration of the Developer's application for City land use entitlements to develop the Project on the Property as required by the Amended DDA (the "Entitlements"):

1. The Developer will provide substantially greater detail with respect to the site specific activities and physical characteristics of the proposed Project;

2. Evaluation of the site specific activities and physical conditions of the proposed Project will be conducted by the City pursuant to CEQA as provided in State CEQA Guidelines Section 15168(c)(4) or 15168(d)(1); and

3. Mitigation measures required as part of the EIR that are applicable to the Project, and any other mitigation measures deemed necessary as a result of such review, have been incorporated as requirements in the Amended DDA, and will be incorporated into the City Entitlements or other Project approvals; and

**WHEREAS**, by Resolution 13-027 of October 23, 2013, the Planning Commission of the City determined, in accordance with Government Code Section 65402(c), that the disposition of the Property by the Housing Authority and the development of the Project by the Developer pursuant to the Amended DDA conforms to the Specific Plan and the City's General Plan; and

**WHEREAS**, as housing successor of the dissolved RDA, the Housing Authority has inherited all of the rights, powers, assets, duties and obligations of the RDA in connection with the disposition of the Property pursuant to the Amended DDA, including the power and duty to dispose of the Property consistent with the disposition requirements of the CRL that formerly applied to the RDA; and

**WHEREAS**, in compliance with these powers and duties, the City Council and the Housing Authority have each considered the disposition of the Property as set forth in the Amended DDA, have followed all requisite procedures, and by this Resolution intend to adopt all requisite findings in connection with the foregoing, including, without limitation, the requirements of the CRL set forth in Health and Safety Code Sections 33431 and 33433; and

**WHEREAS**, specifically, Health and Safety Code Section 33433 requires that:

1. Before any property acquired, in whole or in part, with tax increment monies is sold for development pursuant to a redevelopment plan, such sale shall first be approved by the City Council (and, in this case, the Housing Authority), after a duly noticed public hearing of the City Council (and, in this case, the Housing Authority); and

2. The City (and, in this case, the Housing Authority) shall make available for public inspection a copy of the proposed sale and a summary which describes the financial aspects of the transaction (the "Section 33433 Summary Report"); and

**WHEREAS**, in accordance with the applicable statutes, the required documents have been made available for inspection and the City Council and the Housing Authority have reviewed the Section 33433 Summary Report, as prepared by the real estate consulting firm Economic and Planning Systems, Inc. and dated October 14, 2013; and

**WHEREAS**, the Section 33433 Summary Report, a copy of which is on file with the City Clerk and the Housing Authority Secretary, outlines the proposed Project and the Amended DDA, sets forth the estimated value of the Property under the terms of the Amended DDA and compares such value to the consideration to be paid by the Developer for the Property under the Amended DDA, summarizes the economic impacts of the proposed Project and the Amended DDA, and describes how the proposed Project under the Amended DDA will eliminate blight and provide affordable housing in the Project Area analysis; and

**WHEREAS**, the Section 33433 Summary Report concludes that the Developer's proposed consideration to be paid to the Housing Authority for the Property pursuant to the Amended DDA is not less than the Property's fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale of the Property in accordance with the Amended DDA; and

**WHEREAS**, the proposed disposition and development of the Property in accordance with the Initial DDA and the Amended DDA will assist in the elimination of blight by redeveloping and removing dilapidated and vacant residential and commercial buildings, remediating environmental contamination, and enhancing the quality of life of present and future residents, will assist in the provision of affordable housing for very low-income households, and is consistent with the goals of the Implementation Plan; and

**WHEREAS**, a duly noticed joint public hearing by the City Council and the Housing Authority on the proposed sale of the Property and on the Amended DDA was held on November 19, 2013; and

**WHEREAS**, the findings, determinations, resolutions, and actions set forth in this Resolution are based in part on the following (collectively, the "Supporting Documentation"), which are incorporated by reference in this Resolution: (1) the Staff Report; (2) the Section 33433 Summary Report; (3) Planning Commission

Resolution 13-027; (4) the EIR; (5) the Specific Plan; (6) the City General Plan; (7) the Redevelopment Plan; (8) the Implementation Plan; (9) the Assignment and Assumption Agreement; and (10) the Amended DDA.

**NOW, THEREFORE**, the Board of the Housing Authority (the "Housing Authority Board"), the City Council of the City of Milpitas, and the Board of the Successor Agency (the "Successor Agency Board") hereby find, determine, declare and resolve as follows:

1. The Housing Authority Board, the City Council, and the Successor Agency Board have considered the full record before them, which includes, but is not limited to, the Supporting Documentation, testimony by staff and the public, and other materials and evidence submitted or provided to them. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. Based on the Supporting Documentation, the Housing Authority Board and the City Council hereby find and determine that the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA are within the scope of the program of activities for which the environmental impacts were adequately addressed by the EIR, and that none of the events specified in Public Resources Code Section 21166 or State CEQA Guidelines Section 15162 have occurred that would require a supplemental or subsequent environmental impact report. As a result, the Housing Authority Board and the City Council hereby further find and determine that: (a) no new environmental document is required pursuant to CEQA in connection with the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA, as provided in Section 15168(c)(2) of the State CEQA Guidelines; and (b) the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA are exempt from CEQA pursuant to California Government Code Section 65457, dealing with residential projects consistent with a specific plan that was the subject of an environmental impact report certified after January 1, 1980. The City Manager and the Housing Authority Executive Director are hereby authorized to file the appropriate CEQA notice of exemption in connection with the actions set forth in this Resolution.

3. The Section 33433 Summary Report is hereby approved by the City Council and the Housing Authority Board. The City Council and the Housing Authority Board declare that the findings and determinations set forth below in Sections 4 and 5 are based in part on the approved Section 33433 Summary Report.

4. The City Council and the Housing Authority Board hereby find and determine that the consideration to be paid by the Developer for the conveyance of the Property pursuant to the Amended DDA is not less than the Property's fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale of the Property in accordance with the Amended DDA.

5. The City Council and the Housing Authority Board hereby find and determine that the conveyance and development of the Property in accordance with the Amended DDA will assist in the elimination of blight and in the provision of affordable housing for very low-income and low-income households.

6. The City Council and the Housing Authority Board hereby find and determine that the conveyance and proposed development of the Property in accordance with the Amended DDA are consistent with the Milpitas General Plan, the Specific Plan, the Milpitas Municipal Code, the Redevelopment Plan, and the Implementation Plan.

7. The Housing Authority Board and the Successor Agency Board hereby approve the Assignment and Assumption Agreement. The Housing Authority Executive Director and the Successor Agency Executive Director are hereby authorized by the Housing Authority Board and the Successor Agency Board, respectively, to execute the Assignment and Assumption Agreement, subject to staff level correction, if necessary, of any technical errors (such as the correction of typographical misprints, the insertion of address information, and the

like) and to implement, and take other legally-required actions in connection with, the Assignment and Assumption Agreement.

8. The Housing Authority Board and the City Council hereby approve the Amended DDA and the sale of the Property to the Developer in accordance with the Amended DDA. The Housing Authority Executive Director is hereby authorized by the Housing Authority Board to execute the Amended DDA, subject to staff level correction, if necessary, of any technical errors (such as the correction of typographical misprints, the insertion of address information, and the like) and to implement, and take other legally-required actions in connection with, the Amended DDA.

9. The Housing Authority Board, the City Council, and the Successor Agency Board hereby designate the City Clerk as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the City Clerk's Office at 445 East Calaveras Street, Milpitas, California 95035.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, Housing Authority Secretary/  
City Clerk/Successor Agency Secretary

\_\_\_\_\_  
Jose S. Esteves, Chair/Mayor/Chair

APPROVED AS TO FORM:

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Michael J. Ogaz, Housing Authority Counsel/  
City Attorney/Successor Agency Counsel