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County of Napa
Director of Community & Intergovernmental Affairs
1195 Third Street, Suite
Napa, California 94559

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APN Nos. 059-040-017 & -018

**AMENDMENT NO. 1 OF
NAPA COUNTY AGREEMENT NO. 6576

COUNTY REGULATORY AGREEMENT
(The Vineyard Crossings Townhomes and Apartments)**

This Amendment No. 1 of Napa County Agreement No. 6576 ("Regulatory Agreement" or "Agreement") is made as of _____, 2007, by and between the COUNTY OF NAPA, a political subdivision of the State of California ("County"), and M.P. VINEYARD CROSSINGS, L.P., a California limited partnership (the "Developer");

RECITALS

WHEREAS, by Document No. 2006-0006648 recorded on March 24, 2006 in the Official Records of the Napa County Recorder, County and Developer entered into the Regulatory Agreement which included imposition of tenant income restrictions as a condition of a loan to Developer in the amount of \$1,200,000 from the County of Napa Affordable Housing Fund to assist with the cost of permanent financing for 145 affordable family apartments called Vineyard Crossings located in the City of American Canyon on real property then known as 059-040-017 & 059-040-018 on the Maps of the Napa County Assessor then in effect; and

WHEREAS, such restrictions required that rental of 21% of all units (30 units) in the Vineyard Crossings project would be targeted at extremely low income families and 10% of all units (15 units) would be targeted at extremely low income farmworkers or farmworker families; and

WHEREAS, because of difficulty in marketing at least 10% of the units to farmworkers or farmworker families who qualify as "extremely low income", County and Developer after consultation with affordable housing advocates now desire to modify the terms of the Regulatory Agreement to convert the 10% requirement into a preference for tenants qualifying as extremely

low-income farmworkers or farmworker families which would allow rental of vacant units to eligible farmworkers or farmworker families whose income does not exceed 55% of area median income;

TERMS

NOW, THEREFORE, County and Developer hereby amend the Regulatory Agreement as follows:

1. Subsection (d) of Section 1, "Definitions", of the Regulatory Agreement is hereby amended to read in full as follows:

(d) "Extremely Low Income Farmworker Household" means those households with incomes of up to 30% of Median Income who have one or more interdependent persons who live together, one of whom derives or prior to retirement or disability derived a substantial portion of his or her income from agricultural employment as defined in Section 1140.4 of the Labor Code, but also includes any person who works at a packing shed for a labor contractor or other entity that contracts with an agricultural employer in order to perform services in connection with the handling, drying, packing or storing of any agricultural commodity in its raw or natural state, whether or not this person is encompassed within the definition specified in subdivision (c) of Section 1140.4 of the Labor Code.

(e) "Qualifying Farmworker Household" means those households with incomes of up to 55% of Median Income who have one or more interdependent persons who live together, one of whom derives or prior to retirement or disability derived a substantial portion of his or her income from agricultural employment as defined in Section 1140.4 of the Labor Code, but also includes any person who works at a packing shed for a labor contractor or other entity that contracts with an agricultural employer in order to perform services in connection with the handling, drying, packing or storing of any agricultural commodity in its raw or natural state, whether or not this person is encompassed within the definition specified in subdivision (c) of Section 1140.4 of the Labor Code.

2. Subsection (h) of Section 1, "Definitions", of the Regulatory Agreement is hereby amended to read in full as follows:

(h) "Rent" means the total of monthly payments by the tenants of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Developer which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the tenant, including garbage collection, sewer, water, and electricity, gas, other heating, cooking and refrigeration fuel, but not telephone or cable television service (and the deemed cost of utilities must never be less than the utility allowance established or utilized by the Napa Valley Housing Authority, or other successor agency having jurisdiction in the location where the Property is located, from time to time for such housing assisted by such agency); and any other interest, taxes, fees,

or charges for use of the land or associated facilities and assessed by a public or private entity other than the Developer, and paid by the tenant.

3. Section 5, "Occupancy Requirements" of the Regulatory Agreement is hereby amended to read in full as follows:

Section 5. Occupancy Requirements. At least 21% of the total Units (30 Units) shall be occupied by or, if vacant, shall be available for rental and occupancy by, Extremely Low Income Households. At least 10% of the total Units (15 Units) shall be occupied by or, if vacant, available for rental and occupancy by Qualifying Farmworker Households, with a preference for Extremely Low Income Farmworker Households.

4. Section 6, "Allowable Rent", of the Regulatory Agreement is hereby amended to read in full as follows:

Section 6. Allowable Rent.

(a) Subject to Section 7 below, the Rent charged the occupants of the Extremely Low Income Units and Extremely Low Income Farmworker Units shall not exceed one-twelfth of thirty percent (30%) of thirty percent (30%) of Median Income; the Rent charged to the occupants of the Qualifying Farmworker Units pursuant to Section 5 shall not exceed one-twelfth of thirty percent (30%) of fifty-five percent (55%) of Median Income.

(b) In calculating the allowable Rent, the following assumed household sizes shall be utilized:

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
Studio	1
One	2
Two	3
Three	4.5
Four	6

(c) Rents may be increased no more than one (1) time per year, and the maximum Rent levels following an increase, or upon a new occupancy, shall not exceed the Rent levels set forth in subsection (a) above, corresponding to the Median Income figures published by the State of California for that year.

5. Section 7, "Increased Income of Occupying Households", is hereby amended to read in full as follows:

Section 7. Increased Income of Occupying Households.

(a) If upon recertification of an occupant household's income the Developer discovers that the Adjusted Income of an Extremely Low Income Household or

Extremely Low Income Farmworker Household has increased above one hundred forty percent (140%) of the maximum income that defines a household as an Extremely Low Income Household, but has not increased above one hundred forty percent (140%) of the maximum income that defines a household as a Very Low Income Household, then such household's Unit shall no longer be considered an Extremely Low Income Unit and shall begin to be considered a Very Low Income Unit, and the Rent may be increased to not greater than one-twelfth of thirty percent (30%) of fifty percent (50%) of Median Income upon sixty (60) days written notice to the tenant. If this occurs with an Extremely Low Income Unit, the Developer shall rent the next available Unit to an Extremely Low Income Household. If this occurs with an Extremely Low Income Farmworker Unit, the Developer shall rent the next available Unit, in order of preference, to an Extremely Low Income Farmworker Household, or to a Qualifying Farmworker Household as provided in Section 5, at a Rent as provided in Section 6.

(b) If upon recertification of an occupant household's income, the Developer discovers that the income of a household occupying an Extremely Low Income Farmworker Household Unit which is a Qualifying Farmworker Household as permitted by Section 5 has increased to more than 140% of 55% of Median Income, then such household's Unit shall no longer be considered an Extremely Low Income Farmworker Unit and the Rent shall be increased respectively to the unrestricted status amount. The Developer shall then rent the next available Unit that is of similar size to the Farmworker Unit and not reserved for an eligible Extremely Low Income Farmworker Household to, in order of priority, an Extremely Low Income or Qualifying Farmworker Household to satisfy the overall occupancy requirements of Section 5, at Rents in accordance with Section 6.

(c) When an Extremely Low Income Unit or an Extremely Low Income Farmworker Unit becomes vacant upon the termination of the occupancy of the Unit, the Unit shall be deemed to be continuously occupied by an Extremely Low Income household or an Extremely Low Income Farmworker Household, as applicable, until reoccupied, at which time the character of the Unit shall be redetermined.

(d) If, despite reasonably diligent marketing efforts as defined in Section 5, the Developer is unable to rent a vacant Extremely Low Income Farmworker Unit to an Extremely Low Income Farmworker Household or Qualifying Farmworker Household, Developer may submit to County in writing a request to be allowed to rent the Unit to an Extremely Low Income non-Farmworker Household. If, within ten County working days, County fails to give Developer notice of denial of the request, then the request shall be deemed approved. Denial of the request shall be in the sole discretion of County. If the request is approved or deemed approved, then Developer may fill the vacant unit with an eligible Extremely Low Income non-Farmworker Household, and shall rent the next available Unit to an Extremely Low Income Household or Qualifying Farmworker Household as provided in Sections 5, 6, and 7 of this Agreement.

6. Section 9, "Tenant Certification", of the Agreement is hereby amended to read in full as follows:

Section 9. Tenant Income and Status Certifications.

(a) Developer shall obtain, complete, and maintain on file income certifications from each Extremely Low Income Household and each Extremely Low Income Farmworker Household and Qualifying Farmworker Household dated no more than ninety (90) days prior to initial occupancy and annually thereafter. Developer shall make a good faith effort to verify that the income reported by an applicant in an income certification is accurate by obtaining one (1) or more of the following as a part of the verification process: (a) a pay stub for the most recent pay period; (b) an income tax return for the most recent tax year; (c) an income verification form from the applicant's current employer; (d) an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (e) if none of the previously mentioned forms of verification is possible, then another form of independent verification. If an occupant of a Unit refuses to provide information requested by Developer for the annual certification, then Developer shall immediately terminate such household's tenancy in a manner consistent with applicable laws.

(b) Developer shall obtain, complete, and maintain on file farmworker status certifications from each Extremely Low Income Farmworker Household or Qualifying Farmworker Household, dated no more than ninety (90) days prior to initial occupancy and annually thereafter. Developer shall make a good faith effort to verify that the farmworker employment status reported by an applicant in a farmworker employment status certification is accurate by obtaining the following as a part of the verification process: (a) a pay stub for the most recent pay period; (b) a letter from the employer verifying the position currently held or held prior to retirement or disability; or (c) if none of the previously mentioned forms of verification is possible, then another form of independent verification. If an occupant of a Unit refuses to provide information requested by Developer for the annual certification, then Developer shall immediately terminate such household's tenancy in a manner consistent with applicable laws.

7. Section 10, "Tenant Selection", of the Agreement is hereby amended to read in full as follows:

Section 10. Tenant Selection.

(a) Developer shall not discriminate against Extremely Low Income Households or Extremely Low Income Farmworker Households or Qualifying Farmworker Households applicants on the basis of source of income or rent payment (for example, AFDC or Section 8), and Developer shall consider (among other things) a prospective tenant's satisfactory credit history and previous satisfactory rent history. For example, ability to pay shall be demonstrated if a household can show that it paid in a timely manner the same percentage or more of its income for rent as it would be required to pay for the Rent applicable to the Unit to be occupied.

(b) In selecting tenants from among eligible applicants, Developer shall give priority, to the extent permitted by law and as will be more fully set forth in the marketing plan to be approved by the County pursuant to the Loan Agreement, to an applicant household in which at least one member either (i) has been displaced, within the meaning of Title 25 California Code of Regulations Section 6008(f), by the activities of County and has not occupied safe, sanitary permanent housing since being displaced; or (ii) lives or works in the unincorporated areas within the jurisdictional boundaries of Napa County.

(c) Developer shall market the Units in accordance with the marketing plan approved by County pursuant to the Loan Agreement (which, among other things, prohibits any minimum income requirement for holders of Section 8 certificates).

8. Section 22, "Notices", of the Agreement is hereby amended to read in full as follows:

Section 22. Notices, Demands and Communications.

Formal notices, demands, and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, return receipt requested, or delivered by an express delivery service with a receipt showing date of delivery to the principal offices of the Parties as follows:

County: County of Napa
c/o Community & Intergovernmental Affairs Division
1195 Third Street, B-20
Napa, California 94559
Attention: Director

Developer: M.P. Vineyard Crossings, L.P.
C/O Mid-Peninsula Housing Coalition
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attention: President

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 22. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

9. Section 29, "Approval", of the Agreement is hereby amended to read in full as follows:

Section 29. Approval.

Whenever this Agreement calls for County approval, consent, or waiver, other than consent to amendment of this Agreement as provided in Section 31, the approval, consent, or waiver of the Napa County Executive Officer, Assistant Napa County

Executive Officer, or the Director of County's Community and Intergovernmental Affairs Division shall constitute the approval, consent, or waiver of the County, without further authorization required from the County Board. County hereby authorizes the Director of its Community and Intergovernmental Affairs Division to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of County, and to take such actions and execute such documents on behalf of County as may be necessary to carry out this Agreement. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

10. This Agreement shall be effective as of the date first above written.

11. Except as provided in (1) through (10), above, the terms and conditions of the Agreement shall remain in full force and effect as originally approved.

IN WITNESS WHEREOF, Parties have executed this Amendment No. 1 as of the date first above written.

COUNTY OF NAPA, a political subdivision of the State of California

By: _____
BRAD WAGENKNECHT, Chair of the Napa County Board of Supervisors

"County"

ATTEST: GLADYS I.COIL,
Clerk of the Board of Supervisors

By _____

APPROVAL AS TO FORM: ROBERT WESTMEYER, Napa County Counsel
By: *Margaret L. Woodbury*, Chief Deputy
(by e-signature)
Date: February 14, 2008

APPROVED BY THE BOARD OF SUPERVISORS

Date: _____

Processed By: _____

Deputy Clerk

M.P. VINEYARD CROSSINGS, L.P. a California limited partnership
By: MP SANTA CLARA, INC., a California nonprofit public benefit corporation, its general partner

By: 
FRAN WAGSTAFF, Assistant Secretary

[SIGNATURES MUST BE NOTARIZED]