

RESOLUTION NO. OB-13-14

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING THE SECOND AMENDMENT TO THE AFFORDABLE HOUSING AGREEMENT – JAMES C. MILLER AND MARCIA M. MILLER, dba BAY KITCHEN AND BATH REMODELERS.

WHEREAS, Section 34180 (a) of the California Health and Safety Code provides that Successor Agency actions to establish new repayment terms for outstanding loans, where the terms have not been specified prior to the effective date of Section 34180, are subject to Oversight Board review and approval; and

WHEREAS, Section 34181 (e) of the California Health and Safety Code provides that the Oversight Board shall direct the Successor Agency to determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities; present proposed termination or amendment agreements to the Oversight Board for its approval; and approve any amendments to or early termination of those agreements if it finds that the amendments or early termination would be in the best interest of the taxing entities; and

WHEREAS, the El Cajon Redevelopment Agency (“Agency”) Board authorized the Executive Director to enter into an Affordable Housing Agreement (“AHA”) with James C. Miller and Marcia M. Miller, dba Bay Kitchen and Bath Remodelers (“Borrower”) in the amount of \$550,000 for the acquisition, rehabilitation and resale of properties under the Greenovation Program; and

WHEREAS, the AHA was assigned by the former El Cajon Redevelopment Agency to the El Cajon Housing Authority (“Authority”) on January 31, 2012, as the successor to the housing assets and functions of the former El Cajon Redevelopment Agency, and the AHA was further approved by the DOF on August 23, 2012, in Exhibit C of the El Cajon Housing Successor Agency Asset Report Form; and

WHEREAS, the Oversight Board (the “Oversight Board”) of the Successor Agency of the former El Cajon Redevelopment Agency (the “Successor Agency”) held a regularly scheduled meeting on February 20, 2013, at which time it considered a First Amendment under that certain Affordable Housing Agreement between the former El Cajon Redevelopment Agency and the borrower, James C. Miller and Marcia M. Miller, dba Bay Kitchen and Bath Remodelers (the “Borrower”), dated October 12, 2010, (the “AHA”), for the purpose of acquiring, substantially rehabilitating and reselling substandard properties to low and moderate-income households under the Greenovation Program; and

WHEREAS, the proposed amendment would extend the term of the AHA from March 14, 2014 through March 13, 2015, extend the due date of the Promissory Note to the earlier of twenty-four (24) months from the date of recordation of the Project Unit Deed of Trust or the expiration of the Term of the Agreement, and add other minor clarifying language to the terms of the AHA; and

WHEREAS, although completion of the project has been delayed due to unanticipated design and plan corrections, approval of the amendment would have minimal impact to the Successor Agency, the City of El Cajon, and all taxing entities sharing in the balance of the enforceable obligation to the Successor Agency; and

WHEREAS, the El Cajon Housing Authority is scheduled to take action on the Second Amendment, substantially in the form as presented in **Exhibit "A"**, on March 11, 2014.

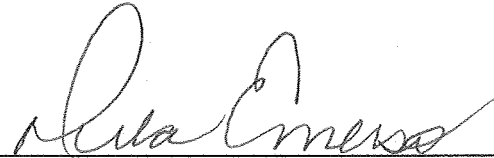
NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

- A. The Oversight Board finds that:
  - 1. The recitals above are true and correct and have been incorporated herein by reference; and
  - 2. The proposed project is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because it will have no physical effect on the environment; and
  - 3. The proposed amendment would have a minimal impact to the taxing entities.
- B. The Oversight Board hereby APPROVES the proposed second amendment to the AHA, to extend the term expiration by one-year from March 14, 2014 through March 13, 2015, extending the due date of the Promissory Note to not earlier than twenty-four (24) months from the date of recordation of the Project Unit Deed of Trust or the expiration of the Term of the Agreement, and other minor clarifying language as presented in **Exhibit "A"**, with such changes as may be approved by the Authority Executive Director.
- C. The Executive Director of the Authority, or any person designated by the Executive Director, is hereby authorized to execute the Second Amendment.

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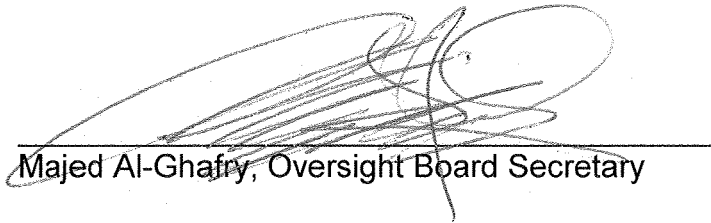
PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 19th day of March 2014, by the following vote to wit:

AYES: ABUSHABAN, BUXBAUM, CHADWICK, GRIFFIN, GRIFFITHS,  
SHUTE, TURNER-EMERSON  
NOES: NONE  
ABSENT: NONE



Debra Turner-Emerson, Chairperson

ATTEST:

  
Majed Al-Ghafry, Oversight Board Secretary

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**SECOND AMENDMENT TO  
AFFORDABLE HOUSING AGREEMENT  
BETWEEN EL CAJON HOUSING AUTHORITY  
AND JAMES C. MILLER AND MARCIA M. MILLER  
dba BAY KITCHEN AND BATH REMODELERS**

THIS SECOND AMENDMENT is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_ 2014, by and between James C. Miller and Marcia M. Miller, dba Bay Kitchen and Bath Remodelers (the "Borrower"), and the El Cajon Housing Authority Agency, a public body corporate and politic (the "Authority"), which has succeeded in the housing interests of the El Cajon Redevelopment Agency (the "Agency").

**RECITALS**

1. Developer and Agency entered into that certain Affordable Housing Agreement dated March 14, 2011 (as amended from time to time, the "AHA"), for the purpose of participating in the Agency's Greenovation Program (the "Program") by establishing procedures for a loan of the Agency's low- and moderate-income housing funds (the "Program Loan") to Borrower in order to fund the acquisition, substantial rehabilitation, and ultimate sale of clean, safe and affordable single-family homes to persons and families of low-and moderate-incomes.

2. On February 1, 2012, the Agency was dissolved by operation of law as required by Assembly Bill 1X 26 ("AB 1X 26") and the California Supreme Court decision in *California Redevelopment Agency v. Matosantos*, upholding AB 1X 26.

3. Prior to the dissolution of the Agency the City Council for the City of El Cajon (the "City Council") established the El Cajon Housing Authority (the "Authority") in order to transfer the affordable housing functions of the Agency, to the Authority.

4. Prior to the dissolution of the Agency, and as allowed by AB 1X 26, the City Council designated the Authority as the successor to the housing assets and functions of the Agency, including an assignment, on January 24, 2012, of all rights and obligations under the AHA. The AHA was further approved by the California Department of Finance ("DOF") on August 23, 2012, in Exhibit C of the El Cajon Housing Successor Agency Asset Report Form.

5. As a result of the dissolution of the Agency the Authority has limited resources available in order to assist in the development of clean, safe and affordable housing under the Program, and has determined that in order to achieve such goals, the Program should be modified to allow such opportunities to include multi-family housing and also to provide a means to convey any multi-family housing to the Authority, at the sole discretion of the Executive Director, at a cost not to exceed the amount of the loan from the Authority to the Borrower.

6. On April 4, 2013, Authority and Borrower instituted that certain "First Amendment to Affordable Housing Agreement Between El Cajon Housing Authority and James C. Miller and Marcia M. Miller dba Bay Kitchen and Bath Remodelers" (the "First Amendment"), to extend the term of the AHA for one (1) additional year, for the period of March 14, 2013 through March 13, 2014, to acquire and rehabilitate multi-family affordable units, to reduce the amount of rehabilitation under the Program, and to require that any multi-family housing units, as defined, must first be offered to the Authority at a cost not to exceed the amount of the outstanding Program Loan from the Authority to the Borrower.

7. This Second Amendment to Affordable Housing Agreement (the "Second Amendment") is necessary to extend the term of the AHA from March 14, 2014 through March 13, 2015, to extend the due date of the Promissory Note, and add other minor clarifying language to the terms of the AHA.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Recital C is hereby amended to read as follows:

C. The Program Loan shall be used by the Borrower for such activities as:

Acquisition, rehabilitation and resale of single-family and multi-family residential properties located in the City of El Cajon boundaries that must be sold (in the case of single-family properties) to eligible first time homebuyers, and (in the case of multi-family projects) to the Authority, at the sole discretion of the Executive Director. Each unit that is acquired, rehabilitated and resold under the Program (the "Project Unit") will be encumbered with a Promissory Note, Deed of Trust and other security documents (the "Project Unit Loan"). The purchase of said real property shall be owner-occupied, vacant, foreclosed or substandard units (in the case of single-family properties), or vacant, foreclosed, substandard, or occupied by a portion of Low-Income households (in the case of multi-family properties), and either (1) offered for sale as owner-occupied units, under the Authority's California First-Time Homebuyer Program, or (2) sold to the Authority at a price not to exceed the amount of the Program Loan (the "Affordable Units"), at the sole discretion of the Executive Director. A portion of the Program Loan made be advanced to Borrower for earnest money deposits, not to exceed \$5,000, which will be incorporated into a Project Unit Loan or must be repaid to the Authority should acquisition of property not occur. It is the intent of Borrower to repay all outstanding Project Unit Loans at the

completion of the rehabilitation and at the sale of the units. As such, Authority funds may remain within the financial structure of the Project thereby requiring all such housing units to be affordable to and occupied by low- and moderate-income persons or families as defined in Section 50093 of California Health and Safety Code.

Section 2. Subsections (a) and (c)(2) of Section 1.1 are hereby amended to read as follows:

(a) Project Unit Loan. The loan amount of each Project Unit shall be subject to approval by the Agency Executive Director or designee after a review of each Greenovation Project Budget. The loan amount will include funds advanced to Borrower for earnest money deposits, not to exceed \$5,000, which will be incorporated into a Project Unit Loan or must be repaid to the Authority should acquisition of property not occur. The Agency states that none of the funds loaned pursuant to this Agreement shall constitute Federal Funds within the meaning of Section 42 of the Internal Revenue Code.

(c) Promissory Note.

(2) The Note shall bear interest at the annual rate of 3.25%. Principal and interest shall be due and payable on the earlier of twenty-four (24) months from the date of the recordation of the Project Unit Deed of Trust or the expiration of the Term of the Agreement. The Executive Director or designee may modify the Promissory Note and extend this period in the event a determination is made that the delay is outside the control of Borrower, but in no event shall the maturity date exceed the expiration of the Term of the Agreement. Principal and interest may be prepared in whole or in part at any time, and from time to time, without notice or penalty.

Section 3. Section 1.5 is hereby amended to read as follows:

Section 1.5 – Term of Agreement. Subject to provisions of Section 1.13 “Termination” of this Agreement, the term of this Agreement shall be for a period of four (4) years from the date of execution of this Agreement as first shown above. Such term may be extended upon written agreement of both parties to this Agreement. Such extension is contingent upon the availability of funds and continued authorization for

program activities and is subject to amendment or termination due to lack of funds, authorization, reduction in funds and/or change in regulations.

Section 4. Section 1.11 is hereby amended to read as follows:

Section 1.11 – Construction Observations. The Agency shall be and is hereby authorized to inspect and review the status of construction and development of the Project, as referenced in Section 1.16 of this Agreement without liability for said inspection and review.

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IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Affordable Housing Agreement effective the date and year first written above.

EL CAJON HOUSING AUTHORITY,  
a public body, corporate and politic,  
successor in interest to the  
El Cajon Redevelopment Agency

Date \_\_\_\_\_

\_\_\_\_\_  
Douglas Williford, Executive Director

ATTEST:

\_\_\_\_\_  
Belinda A. Hawley, Secretary

JAMES C. MILLER AND MARCIA M. MILLER  
dba BAY KITCHEN AND BATH REMODELERS

Date \_\_\_\_\_

\_\_\_\_\_  
James C. Miller, Owner

\_\_\_\_\_  
Marcia M. Miller, Owner

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Morgan L. Foley, General Counsel

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Jennifer L. Ficacci  
City of El Cajon Housing Manager