

AFFORDABLE HOUSING AGREEMENT

DATED January 18, 1989

BY AND BETWEEN

HOUSING AUTHORITY OF THE CITY OF ALAMEDA

AND

COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA

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HOUSING AUTHORITY OF THE CITY OF ALAMEDA
COMMUNITY IMPROVEMENT COMMISSION OF THE
CITY OF ALAMEDA

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (hereinafter referred to as the "Agreement") is executed and made effective on this 18th day of January, 1989, by and between the HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a public body, corporate and politic (the "HOUSING AUTHORITY") and the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body, corporate and politic (the "COMMISSION").

RECITALS

WHEREAS, the HOUSING AUTHORITY and the COMMISSION are interested in the development of housing in the City of Alameda, California which will be affordable to very low, low and moderate income persons and families; and,

WHEREAS, by and through the COMMISSION'S West End Community Improvement Project 1985 Tax Allocation Bonds issued in December, 1985 (the "Tax Allocation Bonds") and pursuant to California Health & Safety Code Sections 33670 and 33334.2, the COMMISSION can provide to owners who develop housing for very low, low and moderate income persons and families at affordable housing cost ("Affordable Units") within the The West End Community Improvement Project Area (the "Project Area") some or all of the tax increment proceeds allocated to it pursuant to said Section 33670 and as generated from property taxes levied on properties located

in the Project Area (the "Tax Increment Set-Aside"), subject to adjustments; provided, however, that a minimum percentage requirement of Affordable Units within the Project Area is met pursuant to California Health & Safety Code Section 33413(b)(2) (to wit: 15% of all units developed within the Project Area by public or private entities shall be made available at affordable housing cost to persons and families of low and moderate incomes and of that number, not less than 40% thereof shall be made available at affordable housing cost to very low income households); and,

WHEREAS, Alameda Marina Village Associates and Alameda Marina Center Associates (collectively, "Marina Associates") were private developers who executed with the COMMISSION that certain Affordable Housing Agreement (the "Marina Village Housing Agreement") dated September 30, 1985; and,

WHEREAS, the Marina Village Housing Agreement called for a phased development of housing units (hereafter referred to as "Marina Village") within the Project Area of which 15% of the housing units would be Affordable Units in consideration for assistance from the proceeds of the Tax Allocation Bonds and the Tax Increment Set-Aside; and,

WHEREAS, in September 1986, Marina Associates assigned all of its rights, duties, and obligations in and to the Marina Village Housing Agreement as respects to phases I and II of the Marina Village development to Vintage Properties Homebuilder's Corporation, a California corporation; and as between Marina Associates and Vintage Properties Homebuilder's Corporation, a total of 130 housing units have been built at Marina Village; and,

WHEREAS, on January 17, 1989, the COMMISSION, Marina Associates and Vintage Properties Homebuilder's Corporation executed that certain Termination of Affordable Housing Agreement which had the effect of reducing the Affordable Units to be provided under the Marina Village Housing Agreement to seven (7) Affordable Units, without reducing the total number of housing units built or intended to be built at Marina Village, thereby creating a deficit in the total number of Affordable Units needed to comply with California Health and Safety Code Section 33413(b)(2); and,

WHEREAS, the HOUSING AUTHORITY desires to develop within the Project Area a mixed-use 186-unit senior citizen rental housing and office space complex (the "Project") to be located at Atlantic and Webster Streets in the City of Alameda, as more particularly described in Exhibit "A" attached hereto, (the "Site") and can provide Affordable Units for senior citizens of very low, low and moderate incomes which meet the percentage requirements for both the Housing Authority's Project and Marina Village in accordance with said California Health & Safety Code Section 33413(b)(2).

AGREEMENT

NOW, THEREFORE, for valuable consideration, receipt of which by each of the parties hereto is hereby acknowledged, and for and in consideration of the mutual promises and covenants made herein, the fulfillment of which each party is relying on to its detriment, the HOUSING AUTHORITY and COMMISSION agree as follows:

SECTION 1. PURPOSE.

This Agreement is entered into to provide housing opportunities for "very low income households" and for "persons and families of low and moderate incomes"; to wit: persons and families (including senior citizens) whose incomes are 50% or less of median income (adjusted for family size and revised annually), as defined in California Health & Safety Code Section 50105 for very low income persons and families; and persons and families (including senior citizens) whose incomes are not more than 120% of area median income (adjusted for family size and revised annually), as defined in California Health & Safety Code Section 50093 for low or moderate income persons and families (hereinafter collectively referred to as the "Qualified Tenants").

SECTION 2. TERM.

The term of this Agreement shall be the duration of the Plan For The West End Community Improvement Project Area (the "Plan") adopted by the City Council of the City of Alameda on July 5, 1983, by Ordinance No 2141. The duration of the Plan covers a period which is scheduled to end on July 5, 2023, unless extended. In no event, however, shall the term of this Agreement be less than the period required under California Health & Safety Code Section 33334.3, as such code section may be amended or superseded from time to time.

SECTION 3. AFFORDABLE UNITS; USE RESTRICTION.

3.1 During the term of this Agreement, the HOUSING AUTHORITY shall provide, reserve and maintain at the Site and in

the Project not less than 65 Affordable Units, including 29 Affordable Units for very low income households, which number, when added to the seven (7) Affordable Units to be provided by AREI pursuant to the Marina Village Housing Agreement, as amended, the COMMISSION and HOUSING AUTHORITY understand meets or exceeds the minimum percentage requirements of Affordable Units as defined in California Health & Safety Code Section 33413(b)(2).

3.2 During the term of this Agreement, at least 29 of the Affordable Units as required under Section 3.1 above shall remain affordable to very low income persons and families (including senior citizens).

3.3 In the event additional housing units for the initial development of the Project Area are approved for construction in the existing Project Area during the next five (5) years after the date of this Agreement, the HOUSING AUTHORITY will, upon written notice from the COMMISSION, and for the balance of the term of this Agreement, provide, reserve and maintain at the Site and in the Project additional Affordable Units if necessary in order to meet the minimum percentage requirements as set forth in California Health & Safety Code Section 33413 (b)(2).

3.4 The HOUSING AUTHORITY shall record in the Official Records of the County of Alameda a declaration of land use restrictions (the "Restrictions") against and affecting the Project and the Site as set forth in Sections 3.1 and 3.2 above, which is to be made in compliance with Section 33334.3(e) of the California Health & Safety Code and the execution and recording

of which shall be a condition precedent to the disbursement of Tax Allocation Bond Funds and Tax Increment Set-Aside pursuant to Section 7 below.

The Restrictions shall be in the form substantially as shown in Exhibit "B" attached hereto.

SECTION 4. SELECTION OF QUALIFIED TENANTS.

4.1 The HOUSING AUTHORITY shall be responsible for the publicity and other marketing efforts necessary to rent the Affordable Units to Qualified Tenants. Such marketing efforts shall be conducted in such manner as the HOUSING AUTHORITY shall reasonably deem appropriate. The HOUSING AUTHORITY shall not restrict the rental of an Affordable Unit to an otherwise eligible Qualified Tenant on the basis of handicap, race, color, religion, sex, marital status, ancestry or national origin. All rental agreements, leases, subleases or other transfer of possession of an Affordable Unit by the HOUSING AUTHORITY shall comply with the nondiscrimination and nonsegregation clauses found in California Health & Safety Code Section 33436 and such documents shall include the restrictions as set forth in Section 6(d) below.

4.2 The HOUSING AUTHORITY may at its own discretion make, cause to be made, or allow such investigations as are necessary to determine a prospective Qualified Tenant's creditworthiness and to learn of any other pertinent history and background of the prospective Qualified Tenant as a tenant which may disqualify such applicant on the basis thereof.

SECTION 5. AFFORDABLE RENT.

Rents charged and to be paid by Qualified Tenants shall be based on the formula of affordable rent ("Affordable Rent") as prescribed in California Health & Safety Code Section 50053 and 25 California Administrative Code Section 6922.

SECTION 6. TENANT LEASE FORM.

The form of tenant leases for Affordable Units shall be on such form and contain such terms and provisions as the HOUSING AUTHORITY deems appropriate and as is in accordance with California law; provided, however, that the lease form shall always include the following restrictions:

a) The Affordable Unit will be occupied by a Qualified Tenant as the Qualified Tenant's principal residence for the duration of the lease term.

b) The Qualified Tenant shall ensure that the Affordable Unit is maintained in good repair and in a clean, neat and sanitary condition.

c) The Qualified Tenant shall not use the Affordable Unit for any purpose which is contrary to law or which in any way causes a hazard, danger or unreasonable risk of injury to its occupants or to occupants of other units at the Site.

d) The Qualified Tenant, as an occupant of an Affordable Unit, shall not discriminate and shall comply with California Health & Safety Code Section 33436(b).

e) The restrictions set forth in (a) through (d). above shall be enforceable by the HOUSING AUTHORITY.

SECTION 7. DISBURSEMENTS TO HOUSING AUTHORITY.

7.1 Within thirty (30) days after the execution of this Agreement by the HOUSING AUTHORITY and the COMMISSION, but only if the Restrictions has been executed and duly recorded in the Official Records of Alameda County, California, the COMMISSION shall remit to the HOUSING AUTHORITY the uncommitted Tax Allocation Bond funds plus interest thereon accrued and received by the COMMISSION to date, which aggregate amount is estimated to be not less than \$850,000 and which aggregate amount shall be remitted to the HOUSING AUTHORITY for the purpose of providing Affordable Units in the Project Area. The aggregate amount received by the HOUSING AUTHORITY shall be deposited in an interest-bearing account and it, together with all subsequently accrued interest thereon, shall be accounted for separately from any other fund or account now held or to be held by the HOUSING AUTHORITY.

7.2 The COMMISSION shall set aside and disburse to the HOUSING AUTHORITY the Tax Increment Set-Aside remaining after the COMMISSION has funded and met the debt-service requirements of the Tax Allocation Bonds, and has reimbursed itself for out-of-pocket and administration expenses incurred as provided by Section 7.5 below, for the purposes of financing the development and construction of the Project, including debt servicing the financing; reimbursing the HOUSING AUTHORITY for an affordable housing rent adjustment (the "Affordable Rent Adjustment" as hereinafter defined) and for expenses in establishing and/or maintaining this Agreement, including but not limited to

marketing and leasing the Affordable Units, legal and consultant fees, audit and accounting fees and reasonable administrative costs and expenses allocated to the Project for the administration, maintenance and monitoring of the Affordable Units and this Agreement, provided such administrative costs and expenses are not disproportionate to the actual cost of the production and improvement of the Affordable Units within the Project, as provided under California Health & Safety Code Section 33334(d); covering project operating deficits; and such other uses as the HOUSING AUTHORITY deems necessary and appropriate to continue and maintain the Affordable Units in the Project. The HOUSING AUTHORITY shall be responsible to provide the COMMISSION with reasonable evidence of administrative and actual out-of-pocket expenditures resulting from this Agreement and shall request disbursement of the excess Tax Increment Set-Aside in writing not more often than semiannually, unless such schedule is impracticable in connection with the financing and development schedule selected by the HOUSING AUTHORITY, in which case an alternative schedule for disbursement of the Tax Increment Set-Aside will be determined as shall be mutually agreed upon by the COMMISSION and the HOUSING AUTHORITY. Each such requisition by the HOUSING AUTHORITY shall be processed and paid by the COMMISSION within a reasonable time.

7.3 The HOUSING AUTHORITY shall submit semi-annually to the COMMISSION a written accounting of the status and disposition of the uncommitted Tax Allocation Bond funds and interest to be disbursed by the COMMISSION pursuant to Section 7.1 above and of the

excess Tax Increment Set-Aside to be disbursed by the COMMISSION pursuant to Section 7.2 above. The HOUSING AUTHORITY's report referred to in this Section shall document all expenditures of the uncommitted Tax Allocation Bond funds and interest received, including interest earned thereon; all expenditures of the excess Tax Increment Set-Aside; and the remaining balances of both funds.

7.4 The Affordable Rent Adjustment shall be an amount equal to the difference between the Affordable Rent for an Affordable Unit and the rent charged and received from a non-Qualified Tenant living in a similar non-Affordable Unit in the Project and located at the Site.

7.5 The COMMISSION shall be entitled to reimburse itself out of the Tax Increment Set-Aside for all reasonable out-of-pocket and administrative expenses for reviewing, approving and monitoring the HOUSING AUTHORITY'S compliance with this Agreement (including legal fees incurred in connection with reviewing and/or approving this Agreement), for reviewing and auditing the books and records of the HOUSING AUTHORITY, as is permitted under Section 9.1 hereto, and for audit fees, trustee fees and other related costs of the Tax Allocation Bonds. Such reimbursable out-of-pocket and administrative expenses of the COMMISSION shall not be disproportionate to the actual cost of production and improvement of the Affordable Units within the Project, as provided under California Health & Safety Code Section 33334(d).

7.6 Within two (2) years from the date that the Project has reached at least 95% occupancy for a continuous 90 day period,

the HOUSING AUTHORITY shall file with the COMMISSION a plan (the "Plan") which shall project for the then remaining term of the this Agreement the needs and uses of the Tax Increment Set-Aside in connection with the Affordable Units provided by the HOUSING AUTHORITY assuming that 100% of the housing units at the Project are or will be Affordable Units at the earliest possible date.

On the basis of the Plan filed with the COMMISSION, and in order to achieve 100% Affordable Units at the earliest possible date, the COMMISSION shall disburse the Tax Increment Set-Aside as specified in the Plan effective as of the first month following the month in which the Plan is filed.

The Plan shall be reasonable and once filed, the HOUSING AUTHORITY may not receive more Tax Increment Set-Aside than what the Plan provides unless the COMMISSION approves, which approval shall not be unreasonably withheld.

The purpose of the Plan is to provide the COMMISSION with a basis for allocating the Tax Increment Set-Aside to the Housing Authority and to permit the COMMISSION to recognize and redirect for other eligible uses any excess Tax Increment Set-Aside not needed by the HOUSING AUTHORITY for the Affordable Units it will provide under this Agreement.

SECTION 8. TRANSFERS AND ASSIGNMENTS.

8.1 The HOUSING AUTHORITY may transfer the responsibility of performing any of its duties hereunder, but unless such transfer is with the consent of the COMMISSION, which consent shall not be unreasonably withheld, the HOUSING AUTHORITY shall remain accountable for the performance of such responsibility.

8.2 With the consent of the COMMISSION, which consent shall not be unreasonably withheld, the HOUSING AUTHORITY may substitute the location of the Project, change the number of total units, or modify the unit sizes provided the new location is within the Project Area and the percentage of Affordable Units subject to this Agreement is not reduced.

8.3 The HOUSING AUTHORITY may transfer all or part of its rights and interests as owner of the Project, and, consequently, may assign all or part of its rights and delegate all or part of its duties under this Agreement. Upon any such transfer, assignment and/or delegation, the HOUSING AUTHORITY shall notify the COMMISSION in writing. Until the COMMISSION approves of any such assignment of rights and/or delegation of duties under this Agreement, however, which such approval shall not be unreasonably withheld, the HOUSING AUTHORITY shall remain fully responsible for compliance herewith. The COMMISSION's approval shall, among other concerns, be specifically conditioned upon the transferee/assignee's agreement to assume all of the obligations and duties under this Agreement and of receipt of convincing evidence of the transferee/assignee's ability to meet such obligations and perform such duties. Thereafter, the COMMISSION shall look solely to the HOUSING AUTHORITY's assignee and/or delegatee for enforcement of this Agreement, except that such approval by the COMMISSION shall not release the HOUSING AUTHORITY from any obligations under this Agreement resulting from the HOUSING AUTHORITY's violation or noncompliance thereof occurring prior to an assignment and/or delegation unless the assignee and/or

delegatee has specifically agreed to assume such obligations and to remedy immediately all violations and noncompliances hereunder.

8.4 The rights, duties and obligations of the HOUSING AUTHORITY as created by this Agreement shall be exercised and/or fulfilled with the help and assistance of BRIDGE Housing Corporation of San Francisco, California, which shall act as co-developer in connection with the Project and the Site.

8.5 Except as qualified above, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the HOUSING AUTHORITY and the COMMISSION respectively.

SECTION 9. ENFORCEMENT.

9.1 The COMMISSION may inspect on an annual basis the books and records of the HOUSING AUTHORITY with respect to the Affordable Units and Qualified Tenants in order to evaluate and determine the HOUSING AUTHORITY's compliance with this Agreement.

9.2 In the event that the annual audit and review by the COMMISSION of the HOUSING AUTHORITY's books and records show that the HOUSING AUTHORITY has used the proceeds of the Tax Allocation Bonds, the Tax Increment Set-Aside and the interest earned on the investments thereof for non-Project related purposes or for purposes that are inconsistent with the purposes of this Agreement, then said amount may be deducted from any future payments due to the HOUSING AUTHORITY.

SECTION 10. INTERPRETATION, DEFAULTS AND REMEDIES.

10.1 It is understood that the performances of the HOUSING AUTHORITY and the COMMISSION to establish, maintain and support

housing that is affordable to QUALIFIED TENANTS shall be undertaken on the basis of the HOUSING AUTHORITY'S and the COMMISSION'S good faith and best efforts to comply with the terms of this Agreement. The parties acknowledge that circumstances beyond their control may cause the Tax Increment Set-Aside to be less than that required to establish and maintain the number of Affordable Units required by this Agreement; and, further, acknowledge that circumstances may prevent or delay the rental of a sufficient number of Affordable Units to meet the intent established in Section 3 above. As such, the parties agree that each shall hold the other to a standard of "best efforts" only. In no event, however, shall this Section 10.1 be construed to amend, alter, lessen or waive the requirements, duties and obligations of the HOUSING AUTHORITY and the COMMISSION as prescribed under the applicable provisions of the California Health & Safety Code with respect to the Tax Increment Set-Aside, which both the HOUSING AUTHORITY and the COMMISSION acknowledge and agree requires absolute compliance in order for the Tax Increment Set-Aside to be available for the Project.

10.2 In the event the HOUSING AUTHORITY or the COMMISSION cannot comply with the terms of this Agreement after making a good faith and best effort attempt to do so, then upon mutual agreement of the HOUSING AUTHORITY and the COMMISSION this Agreement shall immediately terminate and neither party shall have any further rights, duties and obligations hereunder.

10.3 In the event of any breach or violation of this Agreement which can not otherwise be avoided, cured or resolved by the

exercise of a good faith and best effort by the defaulting party, the defaulting party shall have ninety (90) days after written notice to it from the non-defaulting party within which to cure or commence to cure said default. If after such period, the defaulting party has neither cured nor in good faith commenced to cure said default, then the non-defaulting party may exercise all rights to which it is entitled under the laws of the State of California.

10.4 In the event that the HOUSING AUTHORITY, after receiving the uncommitted Tax Allocation Bond Funds and/or the Tax Increment Set-Aside in accordance with this Agreement, fails to complete the Project and to provide the Affordable Units as contemplated and required under this Agreement within five (5) years after the execution hereof, then the Housing Authority shall be required to immediately return to the COMMISSION in cash an amount equal to all monies received from the COMMISSION under this Agreement and all interest earned thereon.

10.5 In the event of a dispute as to the interpretation of any provision under this Agreement or as to the respective rights, duties and obligations of each party as created in this Agreement, then such dispute shall be submitted to binding arbitration and each party shall share equally in the cost of arbitration and each party shall bear its own legal and out-of-pocket expenses in their preparation of the arbitration.

SECTION 11. MISCELLANEOUS.

11.1 The COMMISSION is not required to provide any funds in connection with this Agreement other than the monies and funds as specified in this Agreement.

11.2 The HOUSING AUTHORITY shall maintain its books and records relating to this Agreement for not less than three (3) years after the period which it relates.

11.3 Amendments to this Agreement may only be effected in writing which is executed by duly authorized officers of the HOUSING AUTHORITY and the COMMISSION.

11.4 If any provision or provisions of this Agreement are declared illegal or contrary to law, then such provision or provisions shall be deemed null and void but shall not otherwise affect the validity and enforceability of any other provisions of this Agreement. In the event of any such declaration, the HOUSING AUTHORITY and the COMMISSION shall use their best efforts to agree to new and valid provisions which will, as much as practicable, fulfill the terms and purposes of this Agreement as originally contemplated.

11.5 The terms and conditions of this Agreement shall be construed under the laws of the State of California.

IN WITNESS WHEREOF, the HOUSING AUTHORITY and the COMMISSION have caused their duly authorized officers to execute this Agreement on the day and year first hereinabove written.

HOUSING AUTHORITY OF THE
CITY OF ALAMEDA

By: 

Title: Mayor

APPROVED AS TO FORM:

By: 

Title: City Attorney

COMMUNITY IMPROVEMENT
COMMISSION OF THE CITY OF
ALAMEDA

By: 

Title: Mayor

APPROVED AS TO FORM:

By: 

Title: City Attorney

EXHIBIT "A"

[LEGAL DESCRIPTION]

REAL PROPERTY in the City of Alameda, County of Alameda, State of California, described as follows:

All that certain real property situate in the City of Alameda, County of Alameda, State of California, and being a portion of Tract 32, as said tract is delineated and so designated on that certain map entitled "Map of Alameda Marsh Lands, as partitioned among the owners thereof in the suit numbered 8923 and entitled Pacific Improvement Company, plaintiff, vs. James A. Weymire, et al., defendants, Superior Court of Alameda County, State of California", filed July 30, 1900, in Book 25 of Maps at pages 74 to 78 thereof, records of said Alameda County, particularly described as follows: COMMENCING at a granite monument set at the point of intersection of the line segregating the high and dry land from the marsh land, which segregation line is the southerly boundary of the lands partitioned and delineated on said Map of Alameda Marsh Lands, with the center line of the main line tracks of the Southern Pacific Company; running thence from said point of commencement along said segregation line, North 84° 19' 00" West a distance of 44.40 feet to the point of intersection thereof with the southwesterly line of the 100-foot right-of-way of the Southern Pacific Company; thence along said right-of-way line, North 5° 56' 00" East a distance of 178.47 feet to the true point of beginning of the parcel herein described; RUNNING THENCE from said true point of beginning along the line parallel to said segregation line, North 84° 19' 00" West a distance of 416.10 feet to the point of intersection thereof with the easterly line of Webster Street, as said Webster Street was widened by deed from the Regents of the University of California to the City of Alameda by deed dated May 31, 1928, and recorded June 5, 1928, in Book 1867 of Official Records at page 266 thereof, Official Records of said County; thence along said line of Webster Street, North 1° 39' 00" East a distance of 374.50 feet; thence continuing along said line of Webster Street, North 0° 50' 00" West a distance of 221.88 feet; thence, leaving said line of Webster Street, North 89° 10' 00" East a distance of 339.76 feet to a point in said southwesterly line of the right-of-way of the Southern Pacific Company; thence along said right-of-way line, South 5° 56' 00" East a distance of 645.81 feet, more or less, to said true point of beginning; EXCEPTING THEREFROM a parcel of land described as follows:

Commencing at a granite monument set at the point of intersection of the line segregating the high and dry land from the marsh land, which segregation line is the southerly boundary of the lands partitioned and delineated on said map of Alameda Marsh Land, with the center line of the main line tracks of the Southern Pacific Company; running thence from said

point of commencement along said segregation line, North 83° 09' 33" West (the bearing North 83° 09' 53" West being assumed for the purpose of this description, the record bearing being North 84° 19' 00" West) a distance of 44.40 feet to the point of intersection thereof with the westerly line of the 100-foot right-of-way of the Southern Pacific Company; thence along said right-of-way line, North 4° 46' 53" West (the record bearing being North 5° 56' 00" West) a distance of 189.47 feet, more or less, to a point distant thereon South 4° 46' 53" East 634.81 feet from the intersection thereof with the Northern boundary line of that certain 5.304 acre parcel of land designated as "Area A" in a Notice of an Action to Condemn Estate and Interest pending in the United States District Court for the Northern District of California, Southern Division, Suit No. 24109-R, United States of America, vs. The Regents of the University of California, et al., recorded January 10, 1945, in Book 4635 of Official Records of Alameda County, page 410, said last mentioned point being the true point of beginning; thence North 37° 45' 51" West 31.23 feet; thence South 85° 13' 07" West 18.00 feet; thence South 4° 46' 53" East 30.00 feet, more or less, to a point on the Southern boundary line of said 5.304 acre parcel of land; thence along the said last mentioned line South 83° 09' 53" East (the record bearing being South 84° 19' 00" East) 35.73 feet to a point on the said westerly line of the right-of-way of the Southern Pacific Company; thence along said right-of-way line North 4° 46' 53" West (the record bearing being North 5° 56' 00" West) 11.00 feet, more or less, to the true point of beginning.

PARCEL TWO:

All that certain real property situate in the City of Alameda, County of Alameda, State of California, and being a portion of Tract 32, as said tract is delineated and so designated on that certain map entitled "Map of Alameda Marsh Lands, as partitioned among the owners thereof in the suit numbered 8923 and entitled Pacific Improvement Company, plaintiff, vs. James A. Weymire, et al., defendants, Superior Court of Alameda County, State of California", filed July 30, 1900, in Book 25 of Maps at pages 74 to 78 thereof, records of said Alameda County, particularly described as follows:

COMMENCING at a granite monument set at the point of intersection of the line segregating the high and dry lands from the marsh lands, which segregation line is the southerly boundary of the lands partitioned and delineated on said map of Alameda Marsh Lands, with the center line of the mainline tracks of the Southern Pacific Company;

Thence from said point of commencement along said segregation line North 84° 19' 00" West a distance of 44.40 feet to the point of intersection thereof with the southwesterly line of the 100 foot Right of Way of the Southern Pacific Company;

Thence along said Right of Way line North 5° 56' 00" West a distance of 824.28 feet to the TRUE POINT OF BEGINNING of the Parcel herein described and to which Alameda Housing requires title;

Thence from said TRUE POINT OF BEGINNING North $89^{\circ} 10' 00''$ West a distance of 339.76 feet to a point of intersection thereof, with the easterly line of Webster Street, as said Webster Street was widened by the deed from the Regents of the University of California to the City of Alameda by deed dated May 31, 1928 and recorded June 5, 1928 in Book 1867 of Official Records at Page 266 thereof, Official Records of said county;

Thence along said line of Webster Street North $0^{\circ} 50' 00''$ West a distance of 50.00 feet;

Thence leaving said line of Webster Street South $89^{\circ} 10' 00''$ East a distance of 335.30 feet to a point in said southwesterly line of the Right of Way of the Southern Pacific Company;

Thence along said Right of Way line South $5^{\circ} 56' 00''$ East a distance of 50.20 feet to said TRUE POINT OF BEGINNING.

A. P. No. 74-906-6

EXHIBIT "B"

DECLARATION
OF
RESTRICTIVE COVENANTS

THIS DECLARATION is made as of this 18th day of JANUARY, 1989 by the HOUSING AUTHORITY OF THE CITY OF ALAMEDA (hereinafter referred to as "Declarant"), a public body, corporate and politic, as owner of that certain real property located in the City of Alameda, County of Alameda, State of California and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").

R E C I T A L S :

WHEREAS, the Declarant has executed concurrently with he execution of this Declaration that certain Affordable Housing Agreement (the "Affordable Housing Agreement") with the Community Improvement Commission of the City of Alameda (the "Commission"), a public body, corporate and politic, for the purpose of providing rental units at affordable housing cost, as defined under Section 50052.5 of the California Health & Safety Code, in the City of Alameda, California in return for tax increment funds pursuant to Sections 33670 and 33334.2 of said California Health & Safety Code and for other considerations; and

WHEREAS, pursuant to Section 33334.3(e)(1) of the California Health & Safety Code, the Declarant must record covenants or restrictions against the Property to designate and reserve the Property for low or moderate income use for at least 15 years before the Commission can disburse to the Declarant tax increment funds.

D E C L A R A T I O N :

NOW, THEREFORE, in order to carry out the intent of the Affordable Housing Agreement and in accordance with Section 33334.3(e)(1) of the California Health & Safety Code, the Declarant, as owner of the Property described in Exhibit "A" attached hereto, hereby declares that as of the date hereof, and thereafter for a continuous period ending 15 years from the date of initial occupancy of the affordable rental housing units, it shall provide, reserve and maintain at the Property not less than 65 affordable rental housing units, including at least 29 affordable rental housing units which are reserved for occupancy by very low income households (including senior citizens) as defined under Section 50105 of the California Health & Safety Code; provided, however, that the Affordable Housing Agreement has not expired or been cancelled or terminated and provided,

further, that the Declarant has not replaced affordable rental housing units with equally affordable and comparable rental units in another location within the community, which replacement units are available for occupancy prior to displacement of any persons and families (including senior citizens) of low or moderate income residing in units to be replaced and which are not developed with monies from tax increment funds received from the Commission.

This Declaration is a restriction on the Declarant's use of the Property and shall be construed as a covenant that runs with the land, the provision of any other law notwithstanding.

The covenant contained in this Declaration shall be enforceable against the Declarant and the Declarant's successors in interest, by the Commission, including its successors, or by any member or members of the community located and residing within the West End Community Improvement Project Area of the City of Alameda, California.

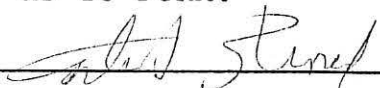
IN WITNESS WHEREOF, this Declaration has been executed by the Declarant's duly authorized official and made effective as of the day and year first hereinafter written.

HOUSING AUTHORITY OF THE
CITY OF ALAMEDA

By: 

Title: Mayor

APPROVED AS TO FORM:

By: 

Title: City Attorney

EXHIBIT "A"

[LEGAL DESCRIPTION]

REAL PROPERTY in the City of Alameda, County of Alameda, State of California, described as follows:

All that certain real property situate in the City of Alameda, County of Alameda, State of California, and being a portion of Tract 32, as said tract is delineated and so designated on that certain map entitled "Map of Alameda Marsh Lands, as partitioned among the owners thereof in the suit numbered 8923 and entitled Pacific Improvement Company, plaintiff, vs. James A. Weymire, et al., defendants, Superior Court of Alameda County, State of California", filed July 30, 1900, in Book 25 of Maps at pages 74 to 78 thereof, records of said Alameda County, particularly described as follows: COMMENCING at a granite monument set at the point of intersection of the line segregating the high and dry land from the marsh land, which segregation line is the southerly boundary of the lands partitioned and delineated on said Map of Alameda Marsh Lands, with the center line of the main line tracks of the Southern Pacific Company; running thence from said point of commencement along said segregation line, North 84° 19' 00" West a distance of 44.40 feet to the point of intersection thereof with the southwesterly line of the 100-foot right-of-way of the Southern Pacific Company; thence along said right-of-way line, North 5° 56' 00" East a distance of 178.47 feet to the true point of beginning of the parcel herein described; RUNNING THENCE from said true point of beginning along the line parallel to said segregation line, North 84° 19' 00" West a distance of 416.10 feet to the point of intersection thereof with the easterly line of Webster Street, as said Webster Street was widened by deed from the Regents of the University of California to the City of Alameda by deed dated May 31, 1928, and recorded June 5, 1928, in Book 1867 of Official Records at page 266 thereof, Official Records of said County; thence along said line of Webster Street, North 1° 39' 00" East a distance of 374.50 feet; thence continuing along said line of Webster Street, North 0° 50' 00" West a distance of 221.88 feet; thence, leaving said line of Webster Street, North 89° 10' 00" East a distance of 339.76 feet to a point in said southwesterly line of the right-of-way of the Southern Pacific Company; thence along said right-of-way line, South 5° 56' 00" East a distance of 645.81 feet, more or less, to said true point of beginning; EXCEPTING THEREFROM a parcel of land described as follows:

Commencing at a granite monument set at the point of intersection of the line segregating the high and dry land from the marsh land, which segregation line is the southerly boundary of the lands partitioned and delineated on said map of Alameda Marsh Land, with the center line of the main line tracks of the Southern Pacific Company; running thence from said

point of commencement along said segregation line, North 83° 09' 33" West (the bearing North 83° 09' 53" West being assumed for the purpose of this description, the record bearing being North 84° 19' 00" West) a distance of 44.40 feet to the point of intersection thereof with the westerly line of the 100-foot right-of-way of the Southern Pacific Company; thence along said right-of-way line, North 4° 46' 53" West (the record bearing being North 5° 56' 00" West) a distance of 189.47 feet, more or less, to a point distant thereon South 4° 46' 53" East 634.81 feet from the intersection thereof with the Northern boundary line of that certain 5.304 acre parcel of land designated as "Area A" in a Notice of an Action to Condemn Estate and Interest pending in the United States District Court for the Northern District of California, Southern Division, Suit No. 24109-R, United States of America, vs. The Regents of the University of California, et al., recorded January 10, 1945, in Book 4635 of Official Records of Alameda County, page 410, said last mentioned point being the true point of beginning; thence North 37° 45' 51" West 31.23 feet; thence South 85° 13' 07" West 18.00 feet; thence South 4° 46' 53" East 30.00 feet, more or less, to a point on the Southern boundary line of said 5.304 acre parcel of land; thence along the said last mentioned line South 83° 09' 53" East (the record bearing being South 84° 19' 00" East) 35.73 feet to a point on the said westerly line of the right-of-way of the Southern Pacific Company; thence along said right-of-way line North 4° 46' 53" West (the record bearing being North 5° 56' 00" West) 11.00 feet, more or less, to the true point of beginning.

PARCEL TWO:

All that certain real property situate in the City of Alameda, County of Alameda, State of California, and being a portion of Tract 32, as said tract is delineated and so designated on that certain map entitled "Map of Alameda Marsh Lands, as partitioned among the owners thereof in the suit numbered 8923 and entitled Pacific Improvement Company, plaintiff, vs. James A. Weymire, et al., defendants, Superior Court of Alameda County, State of California", filed July 30, 1900, in Book 25 of Maps at pages 74 to 78 thereof, records of said Alameda County, particularly described as follows:

COMMENCING at a granite monument set at the point of intersection of the line segregating the high and dry lands from the marsh lands, which segregation line is the southerly boundary of the lands partitioned and delineated on said map of Alameda Marsh Lands, with the center line of the mainline tracks of the Southern Pacific Company;

Thence from said point of commencement along said segregation line North 84° 19' 00" West a distance of 44.40 feet to the point of intersection thereof with the southwesterly line of the 100 foot Right of Way of the Southern Pacific Company;

Thence along said Right of Way line North 5° 56' 00" West a distance of 824.28 feet to the TRUE POINT OF BEGINNING of the Parcel herein described and to which Alameda Housing requires title;

Thence from said TRUE POINT OF BEGINNING North 89° 10' 00" West a distance of 339.76 feet to a point of intersection thereof, with the easterly line of Webster Street, as said Webster Street was widened by the deed from the Regents of the University of California to the City of Alameda by deed dated May 31, 1928 and recorded June 5, 1928 in Book 1867 of Official Records at Page 266 thereof, Official Records of said county;

Thence along said line of Webster Street North 0° 50' 00" West a distance of 50.00 feet;

Thence leaving said line of Webster Street South 89° 10' 00" East a distance of 335.30 feet to a point in said southwesterly line of the Right of Way of the Southern Pacific Company;

Thence along said Right of Way line South 5° 56' 00" East a distance of 50.20 feet to said TRUE POINT OF BEGINNING.

A. P. No. 74-906-6

FIRST AMENDMENT TO AFFORDABLE HOUSING AGREEMENT

DATED April 7, 2004

BY AND BETWEEN

HOUSING AUTHORITY OF THE CITY OF ALAMEDA

AND

COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA

APR 15 2004

WHEREAS, the Housing Authority of the City of Alameda, a public body, corporate and politic (hereinafter, "HOUSING AUTHORITY") and the Community Improvement Commission of the City of Alameda, a public body corporate and politic (hereinafter, "COMMISSION") entered into that certain agreement dated January 18, 1989 to allow the HOUSING AUTHORITY to use available low- and moderate-income housing set-aside funds accruing to the COMMISSION with respect to the West End Community Improvement Project Area (hereinafter, "Project Area," "Project Area Set-Aside Funds," and "the 1989 Agreement," respectively); and

WHEREAS, Section 7.6 of the 1989 Agreement obligated the HOUSING AUTHORITY, upon occupancy of the housing project described in the 1989 Agreement, to submit to the COMMISSION a demonstration of the portion of available Project Area Set-Aside Funds necessary to maintain the affordable housing units the 1989 Agreement obligates the HOUSING AUTHORITY to maintain and the HOUSING AUTHORITY did so in 1993, concluding that all available Project Area Set-Aside Funds were needed to do so (hereinafter, "the 1993 Plan"); and

WHEREAS, the HOUSING AUTHORITY and the COMMISSION (hereinafter, "Parties" and, individually, "Party") have determined that the 1993 Plan overstated the funds needed to maintain the affordable housing units and that as of June 30, 2003 some \$674,852 of available Project Area Set-Aside Funds remain unspent for the maintenance of those units; and

WHEREAS, the COMMISSION is proceeding with developments to meet the affordable housing needs of the City and the Project Area in compliance with the Community Redevelopment Law, Health and Safety Code Sections 33000 et seq., and the Housing Element Statute, Government Code Sections 65580 et seq., to which Project Area Set-Aside Funds can be productively devoted;

WHEREAS, pursuant to City Council Ordinance 2910, as authorized by Senate Bill 1045, on November 5, 2003, the City Council of the City of Alameda amended the Community Improvement Plan for the West End Community Improvement Project Area ("the Plan"), by extending by one year the time limit on the effectiveness of the Plan and the time limit to repay indebtedness, thereby extending the Plan until July 5, 2024;

NOWHEREFORE, the Parties hereby agree to amend the 1989 Agreement as follows:

SECTION 1. INCORPORATION OF RECITALS.

The Parties agree that the foregoing recitals are true and correct and hereby incorporate them into this Amendment to the 1989 Agreement (hereinafter, "this Amendment").

SECTION 2. TERM.

Section 2 ("Term") of the Agreement is modified to read as follows:

"The term of this Agreement shall be the duration of the Plan for the West End Community Improvement Project Area ("the Plan") adopted by the City Council of the City of Alameda on July 5, 1983, by Ordinance No. 2141, as amended by the City Council on November 5, 2003 by Ordinance No. 2910, or as may be otherwise extended. The duration of the Plan covers a period which is scheduled to end on July 5, 2024, unless extended. In no event, however, shall the term of this Agreement be less than the period required under California Health & Safety Code Section 33334.3, as such code section may be amended or superseded from time to time."

SECTION 3. RELEASE OF JUNE 30, 2003 BALANCE.

The HOUSING AUTHORITY hereby relinquishes any claim it might have under the 1989 Agreement or otherwise to the \$674,852 in unused Project Area Set-Aside Funds that existed as of June 30, 2003 and the Parties agree that the COMMISSION may use those funds for any lawful purpose of the COMMISSION.

SECTION 4. DISBURSEMENT OF FUTURE TAX INCREMENT.

Notwithstanding Section 7.6 or any other provision of the 1989 Agreement, the HOUSING AUTHORITY shall submit semi-annually to the COMMISSION a written request for disbursement of available Project Area Set-Aside Funds which request shall document the basis of the HOUSING AUTHORITY's conclusion that the amount of funding requested will actually be needed by the AUTHORITY in the six-month period for which the request is made for the purposes specified in the 1989 AGREEMENT. Any available Project Area Set-Aside funds in excess of those requested by the HOUSING AUTHORITY with respect to a fiscal year shall, upon the closing of the COMMISSION's books for that fiscal year, be deemed unencumbered by the 1989 Agreement as amended by this Amendment and may thereafter be expended by the COMMISSION for any lawful purpose of the COMMISSION.

SECTION 5. INTEGRATION.

This Amendment and the 1989 Agreement, together with Exhibits A and B thereto, constitute the entire agreement of the Parties with respect to the subject matter of this Amendment and the 1989 Agreement and no other promise of the Parties, whether oral or written, made prior to the effective date set forth on the cover of this Agreement, shall be of any force and effect.

IN WITNESS WHEREOF, the HOUSING AUTHORITY and the COMMISSION have caused their duly authorized officers to execute this Amendment to the 1989 Agreement on the day and year set forth on the cover page of this Amendment.

HOUSING AUTHORITY OF THE CITY OF ALAMEDA

By: [Signature]
Title: CITY MANAGER

Approved as to form:

By: [Signature]
Title: Assist. General Counsel

COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA

By: [Signature]
Title: _____

Approved as to form:

By: [Signature]
Title: General Counsel

SECOND AMENDMENT TO AFFORDABLE HOUSING AGREEMENT

DATED 7/6, 2010 .

BY AND BETWEEN

HOUSING AUTHORITY OF THE CITY OF ALAMEDA

AND

COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA

CIC/HABOC
Exhibit to
Agenda Item #2-B
07-06-10

WHEREAS, the Housing Authority of the City of Alameda, a public body, corporate and politic (hereinafter, "HOUSING AUTHORITY") and the Community Improvement Commission of the City of Alameda, a public body corporate and politic (hereinafter, "COMMISSION") entered into that certain agreement dated January 18, 1989, as amended, to allow the HOUSING AUTHORITY to use available low- and moderate-income housing set-aside funds accruing to the COMMISSION with respect to the West End Community Improvement Project Area (hereinafter, "Project Area," "Project Area Set-Aside Funds," and "the 1989 Agreement," respectively); and

WHEREAS, pursuant to City Council Ordinance 2910, as authorized by Senate Bill 1045, on November 5, 2003, the City Council of the City of Alameda amended the Community Improvement Plan for the West End Community Improvement Project Area ("the Plan"), by extending by one year the time limit on the effectiveness of the Plan and the time limit to repay indebtedness, thereby extending the Plan until July 5, 2024;

WHEREAS, pursuant to City Council Ordinance 2970, as authorized by Senate Bill 1096, on August 21, 2007, the City Council of the City of Alameda amended the Community Improvement Plan for the West End Community Improvement Project Area ("the Plan"), by extending by two years the time limit on the effectiveness of the Plan and the time limit to repay indebtedness, thereby extending the Plan until July 5, 2026;

NOW THEREFORE, the Parties hereby agree to amend the 1989 Agreement, as amended, as follows:

SECTION 1. INCORPORATION OF RECITALS.

The Parties agree that the foregoing recitals are true and correct and hereby incorporate them into this Amendment to the 1989 Agreement, as amended, (hereinafter, "this Amendment").

SECTION 2. TERM.

Section 2 ("Term") of the Agreement is modified to read as follows:

"The term of this Agreement shall be the duration of the Plan for the West End Community Improvement Project Area ("the Plan") adopted by the City Council of the City of Alameda on July 5, 1983, by Ordinance No. 2141, as amended by the City Council on November 5, 2003, by Ordinance No. 2910, and amended on August 21, 2007 by Ordinance No. 2970, or as may be otherwise extended. The duration of the Plan covers a period which is scheduled to end on July 5, 2026, unless extended. In no event, however, shall the term of this Agreement be less than the period required under California Health & Safety Code Section 33334.3, as such code section may be amended or superseded from time to time."

SECTION 5. INTEGRATION.

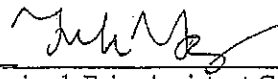
This Amendment and the 1989 Agreement, as amended, together with Exhibits A and B thereto, constitute the entire agreement of the Parties with respect to the subject matter of this Amendment and the 1989 Agreement, as amended, and no other promise of the Parties, whether oral or written, made prior to the effective date set forth on the cover of this Agreement, shall be of any force and effect.

IN WITNESS WHEREOF, the HOUSING AUTHORITY and the COMMISSION have caused their duly authorized officers to execute this Amendment to the 1989 Agreement, as amended, on the day and year set forth on the cover page of this Amendment.

HOUSING AUTHORITY OF THE CITY OF ALAMEDA

By: _____
Michael T. Pucci, Executive Director


Approved as to form:

By: 
Farimah Faiz, Assistant General Counsel

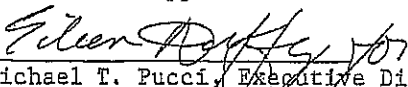
COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA

By: _____
Ann Marie Gallant, Interim Executive Director

Approved as to form:

By: 
Farimah Faiz, Assistant General Counsel

Recommended for Approval:

By: 
Michael T. Pucci, Executive Director
Housing Authority