



**FIRST AMENDMENT**

**TO**

**AGREEMENT BETWEEN COUNTY OF SAN MATEO  
(HUMAN SERVICES AGENCY OFFICE OF HOUSING),**

**AND**

**BAY ROAD HOUSING LIMITED PARTNERSHIP**

Contact Person: Marina Yu  
Telephone number: (650) 802-5039

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN COUNTY OF SAN MATEO  
("COUNTY") AND BAY ROAD HOUSING LIMITED PARTNERSHIP FOR  
DEVELOPMENT OF A MULTI UNIT HOUSING COMPLEX**

**THIS FIRST AMENDMENT TO THE AGREEMENT** entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the County and Bay Road Housing Limited Partnership, as named above.

**WITNESSETH**

**WHEREAS**, the County of San Mateo under Resolution No. 66327 approved October 28, 2003, entered into an Agreement with Bay Road Housing Limited Partnership ("Agreement") to provide a total of \$1 million of funding under the Community Development Block Grant (CDBG") and HOME Investment Partnerships ("HOME") Programs to assist in the development of a 77-unit family housing complex, The Courtyard at Bay Road, in East Palo Alto ("Project"); and

**WHEREAS**, for FY 2003-04, Community Housing Developers, a nonprofit housing development organization, had originally requested \$2 million of funding under the Community Development Block Grant ("CDBG") and HOME Investment Partnerships ("HOME") Programs to assist in the development of the Project; and

**WHEREAS**, Community Housing Developers is the nonprofit general partner of Bay Road Housing Limited Partnership ("Contractor"), set up specifically for this Project to take advantage of Low Income Housing Tax Credits, for which Project has been approved; and

**WHEREAS**, due to limited housing development funding, the County had approved only \$1 million for the Project in October 2003; and

**WHEREAS**, Contractor, along with the City of East Palo Alto, jointly have requested another \$1 million from the County's FY 2004-05 Housing Reserve Fund, established specifically to fund housing requests outside the County's annual HOME and CDBG funding cycle; and

**WHEREAS**, the purpose of this First Amendment is to: 1) increase the Agreement amount to the Project by \$1 million dollars for a total of \$2 millions; and 2) clarify certain terms and conditions of County CDBG and HOME funding.

**NOW THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO THAT THE ORIGINAL AGREEMENT IS AMENDED AS FOLLOWS:**

1. All references to County funding of \$1 million are herein replaced by \$2 million.
2. The contract term of the Agreement is changed to 11/1/2003 to 12/31/2034. Notwithstanding the foregoing, the term shall be extended to coincide with the compliance period described in Exhibit A, Section 10. Compliance Period, under HOME Program Requirements.

3. **Exhibit A**, is modified as follows:

- a. Under the section, FUNDED ACTIVITY, the first paragraph is replaced in its entirety with the following:

**Funds provided under this Agreement shall be used to assist the development of the Project at 1740 Bay Road, known as The Courtyard at Bay Road, in East Palo, consisting of approximately 77 units. The uses of these funds are enumerated in the table below:**

	<b>CDBG</b>	<b>HOME</b>	<b>TOTAL</b>
Acquisition	\$158,419	\$841,581	\$1,000,000
Other Eligible Development Costs		\$1,000,000	\$1,000,000
<b>TOTAL COUNTY INVESTMENT</b>	<b>\$158,419</b>	<b>\$1,841,581</b>	<b>\$2,000,000</b>

**The property is more fully described as follows:**

- b. A new section shall be inserted between FUNDED ACTIVITY and HOME MATCH DOCUMENTATION, and shall read as follows:

**FUNDING CONDITONS ASSOCIATED WITH ENVIRONMENTAL ISSUES**

**In accordance with federal funding provided under this Agreement, an environmental assessment was prepared under the National Environmental Protection Act (“NEPA”), dated July 22, 2003. The NEPA Environmental Assessment listed the following mitigation measures as part of the funding conditions, which Contractor shall meet as part of the Project development process:**

**1) A field and archival study by an archeologist shall be conducted prior to construction start. There is a high possibility of identifying Native American and a low possibility of identifying historic-period archeological resources at Project site. If cultural resources are encountered during the construction, Contractor shall avoid altering the materials and their context until a cultural resource consultant has evaluated the situation. Project personnel should not collect cultural resources. Prehistoric resources include chert or obsidian flakes, projectile points, mortars, and pestles; and dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic resources include stone or adobe foundations or walls; structures and remains with square nails; and refuse deposits or bottle dumps, often located in old wells or privies.**

**2) Structure shall be designed to meet building code for Seismic Zone and soil type present at the site.**

**3) Reduce noise levels to 45 DNL interior. Reduce noise levels to 65 DNL exterior.**

- c. Under HOME PROGRAM REQUIREMENTS, under Subsection 3. Rent and Occupancy Restriction, the third paragraph shall be replaced in its entirety with the following:

**Units affected by this Restriction shall be “floating” within the goal of the unit mix shown in the table below. Floating units are defined as units having no specific HOME-assisted designation. Any unit may be designated a HOME-assisted unit provided the tenants’ household income qualifies under the HOME program described earlier. The Project, upon completion, shall meet the following unit mix goal:**

No.	Unit Type
1	1-BR
5	2-BR
4	3-BR
1	4-BR
11	TOTAL

- d. Under HOME PROGRAM REQUIREMENTS Subsection “4. Security,” the text shall be replaced in its entirety with the following:

**In connection with the increase of the County funding, the County shall return to Contractor the existing promissory note marked as “cancelled”. Upon Contractor's receipt of the original promissory note, Contractor shall execute a new Promissory Note (“Note”) in the amount of \$2 million. The existing deed of trust in favor of the County for \$1 million shall be reconveyed and a new deed of trust (“Deed of Trust”) in the amount of \$2 million shall be executed in favor of the County and recorded in the County Recorder’s Office.**

**The term of the Note shall commence upon execution and shall extend for thirty (30) years from the first day of the month following the issuance of a Certificate of Completion for the Project (“Note Maturity”). No interest shall accrue on the Note until Project Completion, evidenced by the issuance of the Certificate of Completion. Interest at the rate of three percent (3%) simple shall be charged annually, commencing on the first day of the first month following the issuance of the Certificate of Completion.**

**Annual payments shall be made from 50% of the Project's annual Residual Receipts as defined below, and will be due 120 days after the Project's fiscal year. The payment will be first applied to outstanding interest and then to principal until the Note is paid in full. In the event this payment is less than accumulated interest owed plus current interest, any unpaid interest shall carry over to the following year. Interest shall not compound on this interest carry-over. The entire outstanding principal balance plus any unpaid accrued interest shall be due and payable upon Note Maturity.**

**Residual Receipts shall mean, with respect to the Project's fiscal year, the amount by which Gross Revenue exceeds Annual Operating Expenses. "Gross Revenue" is defined as all rental and incidental income from the Project, but excluding tenant security deposits, and any interest earned on said deposits. "Annual Operating Expenses" means costs reasonably and actually incurred for operations and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally acceptable accounting principles. A copy of the audit shall be delivered with payment as specified above. These costs associated with the Project operations and maintenance are: property and other taxes and assessments imposed on the Project; premiums for property damage and liability insurance; utility services not paid for directly by the tenants, including but not limited to water, sewer, trash collection, gas and electricity; extraordinary maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting, and decorating, cleaning, common systems repairs, general repairs, janitorial supplies, and others; any license or certificates of occupancy fees required for operation of the Project; general administrative expenses including but not limited to advertising, marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and others; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the County (with such approval not be unreasonably withheld); annual cash deposited into a reserve for capital replacements of Project improvements in an amount to be agreed upon between County and Contractor; cash deposited into an operating reserve for the Project and such other reserves required by the Contractor's partnership agreement; payment of deferred developer fees; annual partnership management fee; and debt service payments of loans in senior position to County loan. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion, or other non-cash expenses, or any amount expended from a reserve account.**

**Any changes in the formula for calculating Residual Receipts shall be agreed to in writing between the Director of the County Office of Housing ("Director of Housing") and Contractor. In any case, the terms**

of repayment of the Note may be modified by the Director of Housing as deemed necessary to ensure the continuing affordability of the Project. Should there be a discrepancy in the language between the Note and this Agreement, the Note shall prevail.

- e. New Subsections "9" and "10" shall be added to HOME PROGRAM REQUIREMENTS. These subsections shall read:

**9. Performance Period**

With funds provided under this Agreement, Contractor shall perform the following:

- a) Land Acquisition by June 30, 2004. (All parties acknowledge that this performance has been met.)
- b) Construction completion of Project by June 30, 2008. Should Contractor need additional time to meet this performance target, Contractor shall direct a written request to the Director of the Office of Housing. Unless Contractor receives written approval to the request from the Director of the Office of Housing, Contractor may be in default of the terms of this Agreement.
- c) Quarterly performance reports shall be provided during the construction phase of the Project. These reports shall delineate progress of the Project, including any challenges that may have affected the Project schedule. Exhibit C describes the quarterly performance reporting in greater detail.

**10. Compliance Period**

After Project completion, evidenced by a Certificate of Occupancy, Contractor shall provide the County Office of Housing with a housing completion report on forms provided by the County. Thereafter on an annual basis, or more often if required by the County, Contractor shall provide the County with information necessary to monitor the Project relating to program compliance matters. Annual information required shall include: evidence of continuing fire and liability insurance; annual certified financial audit; tenant incomes and rents; certificate of continuing use, and any other compliance information as may be required by the County.

The compliance period shall terminate on the later of the maturity of the Note or expiration of the HOME affordability covenant (Declaration of Restrictive Covenants).

- g. Two new sections shall be added at the end of Exhibit A, and shall read as follows:

**COUNTY NOTIFICATION OF TENANT MARKETING**

The Director of the County Office of Housing shall be notified of all marketing efforts to seek tenants for the Project. Contractor shall provide the County with all copies of notices advertising availability of units.

**COUNTY ACKNOWLEDGMENT AS PROJECT FUNDER**

The County of San Mateo shall be acknowledged by Contractor in applicable publicity materials as a funder of the Project. These materials include, but are not limited to project signage and press releases.

4. Except as herein specified, all other terms and conditions of the Agreement shall remain in full force and effect. Where the language of the Agreement conflicts with that of this Amendment, the latter shall prevail.

IN WITNESS WHEREOF, the parties hereto, by their duty authorized representatives, have affixed their hands to this First Amendment regarding the increase of the funding amount to \$2 million and the term date.

**COUNTY OF SAN MATEO**

By: \_\_\_\_\_  
President, Board of Supervisors

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Clerk of Said Board

Date: \_\_\_\_\_

**BAY ROAD HOUSING LIMITED PARTNERSHIP, a California Limited Partnership**

By: **Community Housing Developers, Inc., a California Nonprofit Public Benefit Corporation, Its General Partner**

By: RON MORGAN, PRESIDENT

Print Name & Title

