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FHA No. 127-44017
Bayview Apartments
Anacortes, Skagit Cy., WA

Return to

404 E. 15th St.
Vancouver, WA 98663

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JERRY MCINTURFF
SKAGIT COUNTY AUDITOR

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JERRY MCINTURFF
SKAGIT COUNTY AUDITOR

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USE AGREEMENT AND AMENDMENT OF REGULATORY AGREEMENT
FOR MULTIFAMILY PROJECTS INSURED OR ASSISTED
UNDER SECTION 236 OF THE NATIONAL HOUSING ACT
AND SUBJECT TO THE EMERGENCY LOW-INCOME
HOUSING PRESERVATION ACT OF 1987
AS AMENDED

This Agreement, entered into by the Secretary of Housing and Urban Development (the "Secretary" or "HUD"), and Bayview Apartments, a partnership (the "Owner"), provides as follows:

WHEREAS, FHA Project No. 127-44017, Bayview Apartments (the "Project"), located in Anacortes, Washington, was financed with the proceeds of a mortgage loan insured by the Secretary under Section 236 of the National Housing Act (12 U.S.C. 1715z-1), and subsidized by the Secretary thereunder, as evidenced by that certain Mortgage Note (the "Mortgage Note") and Mortgage (the "Mortgage") dated March 13, 1970, the Mortgage being recorded in Skagit County, Washington, on March 13, 1970, under Auditor's File No. 736915, and re-recorded on March 19, 1970, under Auditor's File No. 737094, covering real property more particularly described in Exhibit "A" attached hereto; and

WHEREAS, the Project is subject to that certain Regulatory

Agreement, dated March 13, 1970, and recorded in said County on March 13, 1970, under Auditor's File No. 736916, and re-recorded on March 19, 1970, under Auditor's File No. 737095 (the "Regulatory Agreement"); and

WHEREAS, the Project is subject to the provisions of the Emergency Low Income Housing Preservation Act of 1987 (Title II of the Housing and Community Development Act of 1987, P.L. 100-242), as amended ("ELIHPA"), because it meets the definition of "eligible low income housing" in ELIHPA; and

WHEREAS, pursuant to ELIHPA and 24 C.F.R. Part 248, Subpart C, the Owner has requested, and HUD has agreed to provide, certain incentives, as set forth in this Agreement, in exchange for the Owner's Agreement to continue low-income affordability restrictions on the Project for the remaining term of the Mortgage;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Secretary and the Owner hereby agree as follows:

1. Definitions:

a. "Adjusted Income" has the meaning set forth in the definition of "adjusted income" in 24 C.F.R. § 248.201 on the effective date of this Agreement.

b. "Contract Rent" means the rent payable to the Owner pursuant to a project-based Section 8 Housing Assistance Payments Contract ("HAP Contract") between the Owner and HUD. As initially determined by HUD, Contract Rent will not exceed the lesser of the FMR or rents for comparable unassisted units.

c. "FMR" means the Section 8 Existing Fair Market Rent for Skagit County, WA.

d. "Low Income Families" are persons or families whose incomes are more than 50%, but not in excess of 80%, of Median Income as determined by HUD, with adjustments for smaller or larger families.

e. "Median Income" is the effective median income for a four-person family as calculated by HUD, based on the median income for Skagit County, WA (or 125% of the national median

income, if less).

f. "Moderate Income Families" are persons or families whose incomes are more than 80% of Median Income, but not in excess of 95% of Median Income, as determined by HUD, with adjustments for smaller or larger families.

g. "Very Low Income Families" are persons or families whose incomes do not exceed 50% of Median Income, as determined by HUD, with adjustments for smaller or larger families.

h. "Basic Rent" means the basic rental for a Project unit, approved by HUD under Section 236 of the National Housing Act. For any unit receiving Section 8 project-based assistance, Basic Rent shall mean the Contract Rent. For Low and Moderate Income units, the Basic Rent shall be determined by applying the following Basic Rent Factors to Median Income:

<u>Unit Size</u>	<u>Low Income Factor</u>	<u>Moderate Income Factor</u>
1-BR	0.01406250	0.01687500
2-BR	0.01687500	0.02025000
3-BR	0.01933593	0.02320313

2. **Term.** This Agreement shall remain in effect until June 1, 2011, the maturity date of the Mortgage Note.

3. **Use Restriction.** The Project shall be used solely as rental housing for Very Low, Low, and Moderate Income Families, except that no tenant in occupancy as of the effective date of this Agreement ("Current Tenant[s]") shall be required to relocate on the basis of his or her income.

4. **Maintenance of Affordability:**

a. Paragraph 4(c) of the Regulatory Agreement is deleted in its entirety. The Owner will, to the extent practicable, maintain the Project as affordable to the following number of Very Low, Low, and Moderate Income Families:

- 24 units - Very Low (up to 50% of median income)
- 1 unit - Low (51-to-80% of median income)
- 1 unit - Moderate (81-to-95% of median income)
- 20 units - Market Rate (over 95% of median income)

Market Rate Tenants will be considered as Moderate Income Tenants

when determining the aforesaid proportions. The requirement to maintain the aforesaid proportions will not prohibit the Owner from admitting a higher proportion of Very Low Income Tenants.

b. Paragraph 4(d) of the Regulatory Agreement is amended to read as follows:

(d) preference for occupancy shall be given to those families displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster;

5. Rents for Current Tenants:

a. General. Any increase in rents paid by Current Tenants shall be phased in within the restrictions imposed by Section 225(b) of ELIHPA, as follows: If the total rent increase is greater than 30% of the existing rent, it will be phased in equally over a period of not less than three (3) years, with each increase occurring at the beginning of a lease year, the first lease year beginning on the effective date of this Agreement. If the total increase is greater than 10% yet less than 30%, it will be phased in at no more than 10% per year. However, the rent level of any Current Tenant determined in accordance with this phase-in provision may be increased, if made necessary by reasonable increases in operating costs, during the phase-in period.

b. Very Low Income Tenants. Tenants receiving Section 8 project-based assistance shall pay for rent the lesser of 30% of Adjusted Income, or the Section 8 Existing FMR, subject to paragraph 5(a) of this Agreement. Current Very Low Income Tenants who are not elderly or handicapped will receive Section 8 assistance even though not otherwise eligible. Current Very Low Income Tenants not assisted by Section 8 project-based assistance shall pay for rent the lesser of 30% of Adjusted Income or the FMR, subject to paragraph 5(a) of this Agreement.

c. Low and Moderate Income Tenants. Current Low and Moderate Income Tenants and tenants with incomes exceeding the limit for Moderate Income Tenants shall pay 30% of Adjusted Income, or the FMR, whichever is lower. Rent increases shall be phased in, in accordance with paragraph 5(a) of this Agreement. The rent for any Current Low and Moderate Income Tenants who are paying more than 30% of Adjusted Income at the time of execution of this Agreement shall not be decreased as a result of this Agreement.

d. Floor Rent. In the event that the income of a current Low or Moderate Income Tenant decreases below 50% of Median Income, and Section 8 assistance is not available, that tenant shall pay the Floor Rent, to be calculated by applying the following factors to Median Income:

<u>Unit Size</u>	<u>Factors</u>
1 Bedroom	.00937500
2 Bedroom	.01125000
3 Bedroom	.01289062

6. Rents for Future Tenants:

a. Very Low Income Tenants. Future Very Low Income Tenants shall be assisted by available Section 8 assistance pursuant to paragraph 11 of this Agreement, and shall pay 30% of Adjusted Income for rent. Future Very Low Income Tenants for whom Section 8 assistance is not available shall pay the lesser of 30% of Adjusted Income or the FMR.

b. Low and Moderate Income Tenants. Future Low and Moderate Income Tenants, and tenants with incomes exceeding the limit for Moderate Income Tenants, shall pay 30% of Adjusted Income, or the FMR, whichever is lower. In the event that the income of a future Low or Moderate Income Tenant decreases below 50% of Median Income, and Section 8 assistance is not available, that tenant shall pay the Floor Rent, in accordance with paragraph 5(d) of this Agreement.

7. Establishment of Rents - General. Paragraph 4(b) of the Regulatory Agreement is deleted in its entirety, and paragraph 4(a) is revised by adding the following sentence to the end thereof:

Both the basic rental charge and the fair-market rental charge shall include debt service on any loan or return on equity approved by the Commissioner as part of a plan of action under Title II of the Housing and Community Development Act of 1987;

8. Utility Payments. Tenant-paid utility payments for current and future tenants must be deducted from the approved rent actually charged to the tenant. All rents as computed in accordance with this Agreement will include utilities or be reduced by the Personal Benefit Expense, which shall be based on

an annual review by the Secretary, in accordance with current HUD procedures and subject to HUD approval.

9. Rent Adjustments:

- a. Any increase in rents for Current Tenants that results from implementation of this Agreement will be phased in, in accordance with paragraph 5(a) of this Agreement.
- b. Tenants shall be recertified annually.
- c. Rent increases for all units assisted under a HAP Contract shall be determined through application of the Section 8 Annual Adjustment Factor, in accordance with the provisions of the HAP Contract.
- d. Floor Rents for Low and Moderate Income Tenants may be adjusted only with increases in the Median Income.
- e. Paragraph 4(f) of the Regulatory Agreement is deleted in its entirety.

10. Displacement. No Current Tenant shall be displaced, except for good cause.

11. Section 8 Assistance. The Owner agrees to accept assistance under a HAP Contract executed pursuant to Section 8 of the United States Housing Act of 1937, as amended, with respect to 24 units in the Project. Initial Section 8 contract rents will not exceed the lesser of the FMR, or rents for comparable unassisted units. The Owner agrees to accept and utilize such assistance in accordance with the HAP Contract, and agrees to accept any renewal or extension of the HAP Contract, or any contract under a program designated by the Secretary as a successor to the Section 8 program. To the extent authorized by law and to the extent that appropriated funds are available, the Secretary agrees to provide Section 8 assistance under Section 8 or any successor program with respect to 24 units in the Project. If assistance under Section 8 or any successor program ceases to be available during the term of this Agreement, this Agreement will be renegotiated by the parties in accordance with Section 225(c) of ELIHPA.

12. Reserve for Replacements and Amendment of Regulatory Agreement. Paragraph 2(a) of the Regulatory Agreement is amended

by adding the following language to the end thereof:

The Owner shall maintain in the Reserve for Replacements Account a minimum balance of \$46,000. The Secretary will not approve the release of funds from the Reserve for Replacements Account if doing so would reduce the balance below \$46,000, except in emergencies such as natural disasters requiring immediate repairs, or to avoid a default on the mortgage insured by the Secretary. Subject to the foregoing, and subject to the initial funding of \$87,523 to cover the cost of short-lived items, the Owner may make a one-time withdrawal of the balance of funds in the Reserve for Replacements Account as of the effective date of this Agreement.

13. **Distributions and Amendment of Regulatory Agreement.** Paragraphs 6(e)(1) and (2) of the Regulatory Agreement are amended to read as follows:

(1) All distributions shall be made only as of or after the end of a semiannual or annual fiscal period, only as permitted by the law of the applicable jurisdiction, and only in accordance with HUD-approved computations. The right to distributions shall not be cumulative. Upon the request of HUD, the Owner shall obtain a physical inspection report each year from a certified architect, engineer or other party whose qualifications have been approved by the Secretary. The Owner shall keep the inspection report in Project records for at least three (3) years. Prior to the distribution of surplus cash, the Owner must certify to HUD that the Project meets the requirements of paragraph 7 of the Regulatory Agreement, and that any deficiencies known to the Owner are being corrected.

(2) Except with respect to the proceeds of an equity takeout loan approved by the Secretary and insured under Section 241(f) of the National Housing Act, no distribution shall be made from borrowed funds or when there is any default under this Agreement, or under any mortgage secured by the Project.

14. **Residual Receipts and Amendment of Regulatory Agreement.** Any funds on deposit as of the effective date this Agreement may be withdrawn and retained by the Owner. Paragraphs 2(c) and 13(h) of the Regulatory Agreement are deleted in their entirety.

15. **Civil Rights Requirements.** The Owner will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the basis of race, color, creed, sex, national origin, handicap or familial status, including, but not limited to: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), the Fair Housing Act (42 U.S.C. 3601), Executive Order 11063, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and all requirements of HUD regulations implementing these authorities, including, but not limited to, 24 C.F.R. Parts 1, 100, 107 and 110, and Subparts I and M of Part 200.

16. **Agreement Binding Upon Successors and Assigns.** Upon conveyance of the Project during the term of this Agreement, the Owner shall require its grantee to assume its obligations under this Agreement. In any event, this Agreement shall be binding upon the Owner's successors and assigns.

17. **Reports.** The Owner shall furnish the Secretary with such reports concerning the financial condition, operation and condition of the Project as the Secretary may prescribe.

18. **Incorporation of Regulatory Agreement by Reference.** Paragraphs 2; 4(e), (g), (h), (j) and (k); 5; 6 (a), (b), (c), (d), (e) (3) and (4), (f), (g), (h) and (k); 7; 9; 10; 13 (excepting 13(h)) and 17 of the Regulatory Agreement are adopted and incorporated by reference herein. In the event that the Owner prepays the Mortgage Note, or the FHA mortgage insurance is terminated, the provisions listed above shall remain in full force and effect, binding the Owner, its successors and assigns, as if the Mortgage Note were not prepaid or the mortgage insurance were not terminated, except that in the case of such prepayment or termination:

a. the phrase "the Secretary" shall be substituted for the term "Mortgagee" throughout the adopted language of the Regulatory Agreement; and

b. the phrase "mortgaged property" or "mortgaged premises", referred to in the Regulatory Agreement, shall mean the Project.

19. **Enforcement.** In the event of a breach or threatened breach of any provision of this Agreement, any eligible tenant or applicant for occupancy, or the Secretary or his successors or delegates, may institute proper legal action to enforce

performance of such provision, to enjoin any conduct in violation of such provision, and to recover damages (including refunds, with interest, on rent overcharges), or to obtain whatever relief may be appropriate.

20. **Severability.** The invalidity, in whole or part, of any provision of this Agreement shall not affect or invalidate the remaining provisions.

21. **Impairment of Regulatory Agreement.** The terms and provisions of the Regulatory Agreement shall continue in full force except as expressly modified herein. Conflicts between this agreement and the Regulatory Agreement shall be resolved in favor of this Agreement.

22. **Execution of Other Agreements.** The Owner agrees that it has not and will not execute any other agreement with provisions contradictory or in opposition to the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth herein, and supersede any other conflicting requirements.

23. **Effective Date.** The parties agree that this Agreement shall be effective as of: 11-1-93, 1993

IN WITNESS WHEREOF, the parties have executed this Agreement.

^{COMPANY USE}
BAYVIEW APARTMENTS, R.L.
a Partnership

By: Albert C. Angelo
Albert C. Angelo
General Partner

By: Katheryn M. Angelo
Katheryn M. Angelo
General Partner

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

By: [Signature]
Authorized Agent

State of Washington)
County of King)ss

I certify that I know or have satisfactory evidence that Albert C. Angelo and Katheryn M. Angelo are the persons who appeared before me, and each of them respectively acknowledged signing this instrument, on oath stated that he or she was authorized to execute the instrument, and acknowledged it in his or her capacity to be the free and voluntary act and deed of said partnership, for the uses and purposes therein mentioned.

Dated this 27th day of October, 1993.

Lynthia K. Paster
(Print name) Lynthia K. Paster
Notary Public in and for the
State of Washington. My
appointment expires 11/94.

State of Washington)
County of King)ss

I certify that I know or have satisfactory evidence that David C. Rodgers is the person who appeared before me, and who acknowledged that he she signed this instrument, on oath stated that he she was authorized to execute the instrument, and acknowledged it as the authorized agent of the Secretary of Housing and Urban Development to be the free and voluntary act and deed of said party, for the uses and purposes therein mentioned.

Dated this 29th day of October, 1993.

Gloria M. Garcia
(Print name) GLORIA M. GARCIA
Notary Public in and for the
State of Washington. My
appointment expires 12/9/96.

EXHIBIT "A"

All that certain parcel of parcels of land located in the City of Anacortes, County of Skagit, State of Washington, more particularly described as follows:

Beginning at the intersection of the north line of 30th Street and the west line of "R" Avenue as platted in Whites First Addition to the City of Anacortes; thence northerly along the west line of "R" Avenue 512 feet to the point of intersection with the south line of 28th Street; thence west along said south line of 28th Street 230 feet; thence south 396 feet to the point of intersection with the north line of the alley in Block 5, Whites First Addition to the City of Anacortes; thence east 130 feet along the north line of the alley in said Block 5 to the point of intersection with the west line, produced north, of Lot 21, Block 5, Whites First Addition to the City of Anacortes; thence south 115 feet along the west line of said Lot 21 to the point of intersection with the north line of 30th Street; thence east 100 feet along said north line of 30th Street to the point of beginning.