

FATCO
SPWC

93 201236

543304

RECORDED IN OFFICIAL RECORDS
OF ALAMEDA COUNTY, CALIF.
PATRICK O'CONNELL
COUNTY RECORDEREscrow/Loan No. 760288Recording Requested By and
When Recorded Mail To:

'93 JUN 8 PM 3 28

013

City of Hayward
Attn: Director
Department of Community and
Economic Development
25151 Clawiter Road
Hayward, CA 94545-2731**D.H.**

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

CITY OF HAYWARD**REGULATORY AGREEMENT**

This Regulatory Agreement (the "Agreement") dated as of December 1, 1992, is made and entered into by and between the City of Hayward (the "City"), and Eden Housing, Incorporated, a California nonprofit public benefit corporation ("Owner").

RECITALS

1. Pursuant to Chapter 7, Article 4, Section 7-4.11 of the Hayward Municipal Code, nonprofit developers of affordable rental housing projects are entitled to an exemption from the Park Dedication In-Lieu Fees, so long as such developers enter into a regulatory agreement with the City of Hayward to be approved by City Council, which shall guarantee the term of affordability; this agreement fulfills that condition.
2. Eden Housing, Inc., the project developer, has applied to the City for loans to be used toward the development and construction of a rental housing development located at 625 and 661 Berry Avenue in Hayward, California, consisting of a total of fifty (50) units of rental housing ("Development") that will be rented in accordance with this Agreement.
3. After at least ten percent (10%) of the total project costs have been incurred, Eden Housing, Inc. will transfer ownership of the Development to Berry Avenue Associates, a California Limited Partnership, which was formed for the purpose of owning and operating Glen Berry Apartments.
4. The funds loaned to the Owner are from the City of Hayward's Community Development Block Grant (CDBG) funds pursuant to the Loan Agreement between the City and Owner dated as of December 1, 1992. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership and management of the Development in compliance with requirements of 24 CFR Part 570 ("CDBG Guidelines").
5. The funds loaned to the Owner are also from the City of Hayward Redevelopment Agency's ("Agency") Low and Moderate Income Housing Fund ("Fund") pursuant to the Loan Agreement between the City and Owner dated as of December 1, 1992. Under California Health and Safety Code 33354.2 et. seq. ("Code Sections") and the City of Hayward's Low

and Moderate Income Housing Fund Guidelines ("Fund Guidelines") the Agency must restrict developments assisted with monies from the Fund, so that the development remains affordable to low and moderate income households for the longest feasible time. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership and management of the Development in compliance with requirements of this law.

6. The City has agreed to loan funds to Owner on the condition that the Development be maintained and operated in accordance with the CDBG Guidelines, Code Sections and Fund Guidelines and the additional restrictions concerning affordability, operation, and maintenance of the Development specified in this Agreement.
7. In order to ensure that the Development will be used and operated in accordance with these conditions and restrictions, the City and Owner wish to enter into this Agreement.
8. The Owner intends to utilize financing provided, in part, by the equity raised by the Low Income Housing Tax Credit Program ("Tax Credits") and loans from the Department of Housing and Community Development's ("HCD") Rental Housing Construction Program ("RHCP") and Savings Associations Mortgage Company, Inc. ("SAMCO"). The affordability and occupancy requirements of these programs are more restrictive than either the Code Sections, Fund Guidelines and CDBG Guidelines; therefore this Agreement is meant to reflect comparable restrictions and is not meant to be any more restrictive or conflicting with RHCP, Tax Credits or SAMCO.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are a part of this Agreement.
2. **Property.** The Development will be located on the real property described in Exhibit A attached hereto and incorporated herein ("Property").

ARTICLE I DEFINITIONS

1.1 Definitions

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

- (a) "Agreement" shall mean this Regulatory Agreement.
- (b) "City" shall mean the City of Hayward, California.
- (c) "Deeds of Trust" shall mean the Deeds of Trust securing the Notes evidencing the Loan.
- (d) "Development" shall mean the Glen Berry Apartments consisting of fifty (50) units of family rental housing, which includes one resident manager's unit, developed by the Owner.

93201286

- (e) "HCD" shall mean the State of California Department of Housing and Community Development.
- (f) "Loan" shall mean all funds loaned to the Owner by the City pursuant to the Loan Agreement.
- (g) "Loan Agreement" shall mean the Loan Agreement entered into by and between the City and Owner and dated as of December 1, 1992.
- (h) "Low Income Household" shall mean a household with an annual gross income that does not exceed sixty percent (60%) of area Median Income.
- (i) "Low Income Unit" shall mean a Unit that is required to be occupied by Low Income Households, pursuant to Section 2.2 herein.
- (j) "Median Income" shall mean the median gross yearly income adjusted for actual household size, in the Oakland, California Primary Metropolitan Statistical Area, as established from time to time by the U.S. Department of Housing and Urban Development ("HUD"). In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, "Median Income" shall mean the gross income adjusted by actual household size for households in the County of Alameda, California.
- (k) "Notes" shall mean the promissory notes from the Owner to the City evidencing the Loan.
- (l) "Owner" shall mean Eden Housing, Inc., and after the transfer to the following entity, the "Owner" shall mean Berry Avenue Associates, a California Limited Partnership, whose current managing general partner is Eden Housing, Inc. Upon syndication of the tax credits, Glen Berry, Inc. shall become managing general partner.
- (m) "Property" shall mean the real property described in Exhibit A attached hereto.
- (n) "Rent" shall mean the total of all monthly mandatory payments, other than deposits, paid by the tenants for use and occupancy of a Unit.
- (o) "RHCP" shall mean the Rental Housing Construction Program administered by the State of California Department of Housing and Community Development.
- (p) "RHCP Unit" shall mean a Unit assisted by the RHCP financing and occupied by a qualified household.
- (q) "Tax Credit" shall mean the Low Income Housing Tax Credit Program administered by the State of California Tax Credit Allocation Committee.
- (r) "Tax Credit Unit" shall mean a Unit assisted by syndication proceeds raised through Tax Credits and occupied by a qualified household.
- (s) "Unit" shall mean each dwelling unit in the Development.

92201286

**ARTICLE II
AFFORDABILITY COVENANTS**

2.1 Units Restricted. The terms of this Agreement shall apply to all of the Units in the Development that are regulated by RHCP or Tax Credit programs. If the Owner transfers fee or leasehold title to any other entity, including any entity affiliated with that Owner, the new Owner shall include in the deed or other instrument conveying title, a covenant and a condition that the Development will be subject to this Agreement.

2.2 Occupancy Requirement. Forty-nine percent (49%) of the Units in the Development (excluding the resident manager's unit) shall be occupied by Low Income Households, and within the 49% of the Units, not less than twenty percent (20%) of the Units in the Development (excluding the resident manager's unit) shall be subject to the HOME Program Regulatory Agreement.

2.3 Term of Agreement. This Agreement shall commence on the date set forth above and remain in full force and effect and shall apply to the Development for fifty-five (55) years, regardless of any prepayment of the loan or sale, assignment, transfer or conveyance of the Development, unless terminated earlier by the City pursuant to the terms of this Agreement or extended by the mutual consent of the parties.

2.4 Allowable Rent.

(a) Rent charged to the occupants of a Low Income Unit shall not exceed one-twelfth of thirty percent (30%) of sixty percent (60%) of area Median Income.

(b) In calculating the allowable rent for the Low Income Units, the Owner shall abide by the rent standards established by the RHCP or Tax Credit, for the applicable RHCP Units or Tax Credit Units.

2.5 Certification of Tenant Income and Household Size. The Owner shall certify all households residing in Tax Credit Units and RHCP Units in accordance with their respective program requirements.

2.6 Compliance with Other Regulatory Agreements. So long as the Property is encumbered by any regulatory agreement between Owner and any state or federal agency or SAMCO, Owner's compliance with the rent and income requirements of said regulatory agreements shall be deemed to be in compliance with the rent and income restrictions set forth above.

2.7 Waiver. Owner may request a partial waiver of the rent and income restrictions set forth in Article II of this Agreement if a waiver of the restrictions is necessary to maintain the Development as an economically feasible project. Owner shall request the waiver in writing and shall submit to the City such information and documentation as the City may request in order for the City to determine, in its reasonable discretion, (a) whether the waiver is necessary, (b) the number of units to be affected by the waiver, (c) the duration of the waiver, and (d) whether to approve or disapprove the waiver.

For purposes of this Section 2.7, an "economically feasible project" shall mean a project which is meeting its operating expenses (including expenses necessary to maintain the project in good and tenable condition), taxes and assessments, debt service due on loans secured by the property, reasonable management fees and reasonable reserve requirements, and is otherwise in compliance with the terms of all loans secured by the property and any regulatory agreement between Owner and any state or federal agency or SAMCO.

ARTICLE III OPERATION AND MAINTENANCE OF THE DEVELOPMENT

3.1 Use as Rental Housing. Owner shall own, manage and operate the Development to provide fifty (50) units of rental housing (which includes one resident manager's unit).

3.2 Management and Maintenance. Owner is specifically responsible for all maintenance, repair and management functions, including without limitation, the following: selection of tenants, recertification of family income and size, evictions, collection of Rents, routine and extraordinary repairs, and replacement of capital items. Owner shall maintain units, common areas and commercial space in a safe and sanitary manner in accordance with local health, building, community preservation and housing codes.

3.3 Non-Discrimination. Owner shall not discriminate against any prospective tenant on the basis of race, religion, sex, age, disability, sexual orientation, marital status, nor any other arbitrary factor in violation of any state, federal or local law governing discrimination in rental housing.

ARTICLE IV MISCELLANEOUS

4.1 Covenants to Run with the Land. The City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title and assigns, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying any Unit or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument.

4.2 Enforcement by the City. If Owner fails to perform any obligation under Article II of this Agreement, and fails to cure the default within ninety (90) days after the City has notified the Owner in writing of the default or, if the default cannot be cured within ninety (90) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure, the City shall have the right to enforce this Agreement by one or more of the following actions:

(a) **Calling the Loan.** The City may declare a default under the Notes, accelerate the indebtedness evidenced by the Notes, including all outstanding principal and interest, and proceed with foreclosure under the Deeds of Trust.

(b) **Action to Compel Performance or for Damages.** The City may bring an action at law or in equity to compel Owner's performance of its obligations under this Agreement.

93201285

4.3 Amendments. This Agreement shall not be altered or amended except in writing, executed between or among all parties hereto or their successors in title, and duly recorded in the real property records of the County of Alameda, California.

4.4 Attorneys Fees. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees.

4.5 Recording and Filing. The City and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Alameda.

4.6 Governing Law. This Agreement shall be governed by the laws of the State of California.

4.7 Notice. Written notices and other written communications by and between the parties hereto shall be addressed as set forth below unless and until a party hereto has, in writing, communicated a different address to the other party hereto.

City Address:

City of Hayward
Department of Community and Economic Development
25151 Clawiter Road
Hayward, CA 94545-2731

Attention: Director of Community and Economic Development

Owner's Address:

Eden Housing, Inc.
22941 Atherton Street, Suite D
Hayward, CA 94541

Attention: Executive Director

4.8 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

4.9 Subordination.

(a) Upon written request by the Owner, the City shall agree that the terms and conditions of this Agreement shall be subject to and subordinate to the terms and conditions of two (2) construction deeds of trust in favor of Bank of America State Bank and HCD.

(b) Upon written request by the Owner, the City shall agree that the terms and conditions of this Agreement shall be subject to and subordinate to the terms and conditions of a permanent deeds of trust in favor of SAMCO and HCD.

(c) The City agrees to subordinate this Agreement to a Regulatory Agreement in favor of HCD. The subordination shall be between the City and HCD and shall not affect Owner's obligation to comply with the terms of this Agreement, except as otherwise provided herein.

93201286

(d) Upon written request by the Owner, the City shall agree that the terms and conditions of this Agreement shall be subject to and subordinate to the terms and conditions of the deed(s) of trust securing loan(s) to refinance the permanent deed of trust described in paragraph B of this Section 4.9 provided the refinancing deed(s) of trust contain the following conditions:

(i) The City shall receive any notices of default issued by the lender to the Owner;

(ii) The City shall have the right to cure any default by the Owner within ninety (90) days after a notice of default;

(iii) The City shall have the right to foreclose its Deeds of Trust without the lender accelerating its debt provided the City has cured or is attempting to cure any defaults under the other Lender's deed of trust; and

(iv) The City shall have the right to transfer the Development to a nonprofit corporation who shall own and operate the Development as a low income housing project with the consent of the Lender which consent shall not be unreasonably withheld.


(e) The City and the Owner intentionally and unconditionally subordinate this Agreement to the lien of that Deed of Trust by the Owner as the Trustor in favor of the City as the Beneficiary, dated December 1, 1992, recorded December 10, 1992, as Series Number 92 402993 of the Official Records of Alameda County, as amended by that Amendment to Deed of Trust and Loan Agreement between the City and Owner, dated May 1, 1993, recorded concurrently herewith.

98201286

IN WITNESS WHEREOF, the City and Owner hereby execute and enter into this Regulatory Agreement as of the date first set forth above and agree to be bound hereby!

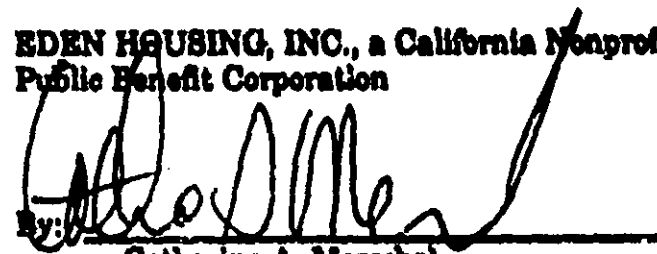
CITY:

CITY OF HAYWARD, a Municipal Corporation

By: 
Jesus Armas
City Manager

OWNER:

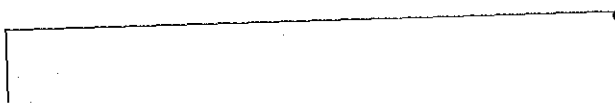
**EDEN HOUSING, INC., a California Nonprofit
Public Benefit Corporation**

By: 
Catherine A. Merschel
Executive Director

APPROVED AS TO FORM:

By: 
City Attorney of City of Hayward

[City-reg-ahd]
Rev: 06/1998



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

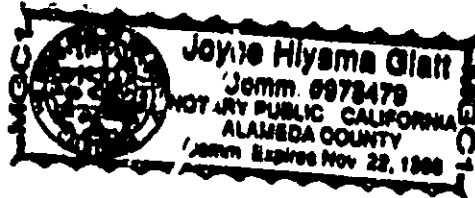
STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

On May 12, 1993 before me, Joyce Miyama Glatt, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Catherine A. Merschel, Executive Director
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Joyce Miyama Glatt (SEAL)
NOTARY PUBLIC SIGNATURE

OPTIONAL INFORMATION

TITLE OR TYPE OF DOCUMENT Regulatory Agreement
DATE OF DOCUMENT December 1, 1992 NUMBER OF PAGES 9
SIGNER(S) OTHER THAN NAMED ABOVE City of Hayward

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

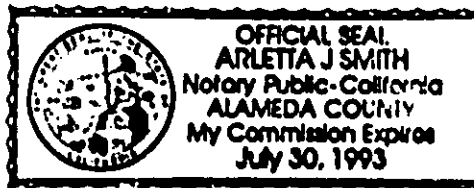
STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

On May 19, 1993 before me, Arletta J. Smith, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, JESUS ARMAS, City Manager
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Arletta J. Smith (SEAL)
NOTARY PUBLIC SIGNATURE

OPTIONAL INFORMATION

TITLE OR TYPE OF DOCUMENT _____
DATE OF DOCUMENT _____ NUMBER OF PAGES _____
SIGNER(S) OTHER THAN NAMED ABOVE _____

93201286

98201286

Order No. SP543304

LEGAL DESCRIPTION

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

That certain parcel of land described in the deed to Thomas K. Chen and Carla Chen, and Kuang-Shuing Chao from James T. Hagerty and Coletta E. Hagerty recorded September 8, 1977, Reel 5039, Image 594, Series Number 77-179603 of Official Records, and that certain parcel of land described in the Affidavit-Death of Joint Tenant recorded May 22, 1953 in Book 7036, Page 196 of Official Records, described as follows:

Beginning at the intersection of the Northeastern line of the parcel of land described in the deed to San Francisco Bay Area Rapid Transit District, filed October 10, 1967, in Reel 2059, Image 260, Official Records of Alameda County, with the centerline of Berry Avenue, 50 feet in width; thence along said centerline North $58^{\circ} 59' 46''$ East, 101.51 feet; thence leaving said centerline of Berry Avenue, along the Easterly line of said parcel described in the Affidavit-Death of Joint Tenant, (Book 7036, Page 196, Official Records), South $31^{\circ} 00' 28''$ East, 413.21 feet to the Southeast corner of said parcel (Book 7036, Page 196, Official Records), same point also lying on the northerly line of the parcel of land described in the Deed to J.G. Realty Co. from Multiple Properties, Inc, recorded December 8, 1967 in Book 2089, Page 853, Official Records; thence along said Northerly line South $58^{\circ} 59' 32''$ West, 165.25 feet to the Southwest corner of the said parcel of land described in the Deed to Thomas K. Chen and Carla Chen, and Kuang-Shuing Chao from James T. Hagerty and Coletta E. Hagerty (Reel 5039, Image 594, Official Records); thence along the Westerly line of said parcel (Reel 5039, Image 594, Official Records) North $31^{\circ} 36' 28''$ West, 388-24 feet to a point on the Southeastern line of Berry Avenue (Reel 2660, Image 734, Official Records); thence along said Southeastern line North $58^{\circ} 59' 32''$ East, 16.32 feet, to a point of curvature; thence along a non-tangent curve concave Northerly with a radius of 31.00 feet, the center of which bears North $21^{\circ} 11' 56''$ East through a central angle of $90^{\circ} 55' 20''$, an arc length of 49.19 feet, to a point of reverse curvature; thence along a tangent curve to the right, with a radius of 60.00 feet, through a central angle of $8^{\circ} 47' 35''$, an arc length of 9.21 feet, to said Northeasterly line of said S.F.B.A.R.T.D. Parcel (Reel 2059, Page 260, Official Records); thence along last said Northeasterly line North $31^{\circ} 00' 14''$ West, 25.00 feet to the point of beginning of this description.

Excepting therefrom that portion thereof conveyed to the City of Hayward by Deed recorded April 25, 1989, Series No. 89-112177.

A. P. No.'s 444-0060-027-05 & 444-0060-003-02

EXHIBIT A

FIRST AMERICAN TITLE