

**SECOND AMENDED AGREEMENT BETWEEN THE CITY OF LAGUNA BEACH AND JOHN & PEGGY PIETIG REGARDING HOUSING ASSISTANCE**

This Second Amended Agreement ("Second Amended Agreement") is made and entered into on January 6, 2015 by and between the City of Laguna Beach (the "City") and John and Peggy Pietig ("Pietig"), sometimes herein referred to individually as a "Party" and collectively as the "Parties."

**Recitals**

A. The City Council of the City of Laguna Beach authorized the establishment of a housing assistance program for a small number of certain current and/or prospective qualified City employees to encourage their residence in the City.

B. A primary consideration for the housing assistance program is that the employee be responsible for the performance of essential services for the City, including but not limited to police, fire, marine safety and sewer services.

C. John Pietig, who currently serves as City Manager and has done so for the past four years (effective December 13, 2010), is such an essential employee. He is on call to respond to serious emergencies at times outside normal business hours, and he is on this status for a substantial portion of his personal time. There is a great benefit to the community to have him reside as near as possible to the scene of possible future emergencies.

D. On December 18, 2001, at which time John Pietig served as the Assistant City Manager and was determined to be an essential employee, the City and John Pietig entered into the "AGREEMENT BETWEEN THE CITY OF LAGUNA BEACH AND PIETIG REGARDING HOUSING ASSISTANCE" ("Original Agreement"), pursuant to which the City and John Pietig purchased the residence, other improvements and the real property commonly known as 3280 Rimcrest Circle, Laguna Beach (the "Property") for the price of \$950,000 ("Purchase Price") after the City determined the Purchase Price represented fair market value.

E. On December 7, 2010, the City Council approved the execution of an "AGREEMENT BETWEEN THE CITY OF LAGUNA BEACH & JOHN AND PEGGY PIETIG REGARDING HOUSING ASSISTANCE" ("Amended Agreement") by which the Original Agreement was modified to, among other things: (i) establish the City Attorney as the designated representative for the City Council to be the person responsible for administering the terms and conditions of the Amended Agreement; (ii) modify the provisions of the Original Agreement related to housing assistance; (iii) allow the City to refinance the balance of the original loan for the purchase of the Property; and (iv) add Peggy Pietig as a Party.

F. On November 18, 2014, the City Council authorized the City Attorney and the Director of Finance and Information Technology to, among other things: (i) communicate an offer to Pietig to modify the provisions of the Amended Agreement to allow them to participate in a certain described direct loan program with the City under which the City would assume the position of lender under a first deed of trust; and (ii) prepare and execute all documents necessary to implement such modifications if the offer is accepted.

NOW, THEREFORE, the City and Pietig agree to continue to participate in a housing assistance program in accordance with the following terms and conditions:

## **1. PURCHASE OF THE PROPERTY**

(a) Tasks Completed. The Parties have implemented the provisions of the Original Agreement related to the purchase of the Property, including the following: (i) Pietig contributed \$550,000.00 to the Purchase Price (57.89%) of the Property, a portion of which was a third party loan secured by a deed of trust ("Original Loan") on the Property; (ii) the City contributed \$400,000.00 the Purchase Price (42.11%); (iii) Pietig and the City shared equally all closing costs related to the purchase of the Property, including but not limited to any real estate broker's fee, title insurance and escrow fees (Pietig was responsible for and paid any and all costs associated with the Original Loan); (iv) the proportional ownership of the Property is shown on the grant deed as a ratio of funds provided by Pietig and the City toward the Purchase Price (Pietig owns an undivided 57.89% interest and the City owns an undivided 42.11% interest).

(b) Continuing Obligations. Pietig and the City shall continue to cooperate in the administration of this Second Amended Agreement including, without limitation, the preparation and execution of all documents necessary to implement this Second Amended Agreement.

(c) Modified Obligations and Refinance of Original Loan. Subsequent to the date of the Original Loan, real estate lending practices effectively precluded Pietig from refinancing the Original Loan to take advantage of the current mortgage rates. Recognizing this inequity, on November 18, 2014, the City Council authorized the City, acting through the City Attorney and the Director of Finance and Information Technology, to replace the Original Loan pursuant to the terms and conditions offered to other City employees who are parties to housing assistance program agreements. In accordance with the City Council decision, Pietig shall have the right to request the City to refinance the balance due on the Original Loan of \$214,131.47 pursuant to the following: (i) as of the Effective Date of this Second Amended Agreement, the interest rate of the Loan shall be 2% (which is .5% percent above the average return on City investments during the twelve (12) months preceding the Effective Date of this Second Amended Agreement but no less than 2%); (ii) the interest rate of the loan ("New Loan") shall be adjusted on or about the date of each anniversary of the Effective Date such that

the interest rate for the subsequent 12 months is .5% above the City's average rate of return on its investments during the preceding twelve (12) months; (iii) in no event will the interest rate of the New Loan during the term of this Second Amended Agreement be less than two percent (2%) or more than five percent (5%); (iv) the term of the New Loan is twenty (20) years from the New Loan date, and Pietig may repay all or a portion of the New Loan at anytime without penalty; and (v) Pietig's New Loan payments shall be deducted from John Pietig's biweekly paychecks during the time John Pietig is a City employee and thereafter Pietig shall make monthly New Loan payments in an amount pursuant to a schedule that the City shall prepare and deliver to Pietig.

## **2. PRIMARY RESIDENCE**

Notwithstanding the City's ownership interest, Pietig shall have an exclusive right, and John Pietig has the obligation, to occupy the Property during the term of this Second Amended Agreement. The Property shall be John Pietig's primary place of residence and he continuously shall reside on the Property during the term of this Second Amended Agreement. Pietig shall, at Pietig's sole cost and expense, maintain the Property, including all improvements and land in good condition and repair and in accordance with all applicable laws during the term of this Second Amended Agreement. Pietig also shall be solely responsible for all sewer, trash, water and utility charges and fees.

## **3. LIENS**

Except for the New Loan, Pietig shall not cause any lien or mortgage to be recorded against the Property unless Pietig has received prior written consent from the City Attorney. Pietig may, after obtaining consent from the City Attorney, use their ownership interest in the Property as security for a loan. The City shall not withhold permission for any loans that do not impair the City's interest in the Property and any loan with a "loan to value" ratio (the value calculated on the basis of Pietig's ownership interest) of 70% or less shall be deemed not to impair the City's ownership interest. Pietig shall be solely responsible for any and all fees and costs associated with any refinancing or home equity loan originated by Pietig.

## **4. SHARED PAYMENT**

Pietig and the City shall pay, in proportion to their ownership interests, their respective share of property taxes, homeowners association dues, and homeowners insurance for the Property. Pietig alone shall have the voting right with respect to the homeowners association. To the maximum extent feasible, all policies of insurance relating to the Property shall name the City as an additional insured as long as the City maintains an interest in the Property. Pietig has presented proof that the City is, as of the Effective Date of this Second Amended Agreement, an additional insured. The City shall not be obligated to pay any portion of homeowners insurance premiums for policies that do not name the City as an additional insured unless the policy provides that the proceeds of insurance shall be paid to the Parties (or to an escrow) in accordance with their respective

ownership interests. To the maximum extent feasible, all policies of insurance relating to the Property shall state the respective interests of the Parties and provide that, in the event of damage to or destruction of the Property, the proceeds of any such insurance shall be paid to the Parties in accordance with their respective interests as of the date of the insurable event. The Parties shall continue to cooperate with one another with respect to any issue related to insurance for the Property.

## **5. HOUSING ASSISTANCE PAYMENT**

The City has determined, based on advice of legal counsel and as of the date of the Original Agreement, that John Pietig receives income, as that term is defined in the Internal Revenue Code, because of the City's ownership interest in the Property and Pietig's contractual right, pursuant to the Original Agreement and this Second Amended Agreement, to the exclusive use and occupancy of the Property. The City has also determined that the amount of income John Pietig receives is equal to the fair market rental value of the Property multiplied by City's ownership interest in the Property less the costs of maintenance and repair that Pietig incurs pursuant to this Second Amended Agreement. Pietig shall maintain, and submit to the City on or before March 1<sup>st</sup> of each year, records reflecting the maintenance and repair costs incurred during the previous calendar year. The City will continue to report to the Internal Revenue Service and the Franchise Tax Board the income that John Pietig receives by virtue of Pietig's residence on and exclusive use of the Property. The City shall, each year during the term of this Second Amended Agreement, pay John Pietig a housing assistance payment equal to the amount of federal and/or state income taxes that Pietig is required to pay because of the income attributable to the City's ownership interest in, and Pietig's residence on and exclusive right to use, the Property. The City shall, periodically, retain a real estate broker with experience renting property in Laguna Beach to determine the annual fair market rental value of the Property, taking into consideration the terms and conditions of this Second Amended Agreement including, without limitation, Pietig's obligation to pay all costs of repair and maintenance. The City shall provide Pietig with notice of this determination of fair market rental value. In no event shall the housing assistance payment, the income John Pietig receives because of the right to exclusive use of the Property, or the value of the City's equity interest in the Property be considered compensation for purposes of the California Public Employees Retirement System.

## **6. CAPITAL IMPROVEMENTS**

(a) Definition. For purposes of this Second Amended Agreement, the term "capital improvement" means an improvement to the Property that (i) is consistent with all City zoning ordinances and (ii) requires a City-issued permit, has a useful life that exceeds 10 years, enhances the value of the Property by an amount generally proportional to the cost, and is not considered normal repair, maintenance or replacement (such as the replacement of windows with material of similar quality or appearance). Examples of improvements that qualify as capital improvements include, without limitation: (i)



replacement of a roof or replacement of the siding on a home; (ii) room additions; (iii) kitchen or bathroom remodels that involve the installation of material (including tile and flooring) or fixtures that are of significantly higher quality than the material or fixtures being replaced; and (iv) the installation of new cabinets and related facilities in areas where they did not previously exist.

(b) Equity Adjustment. The Parties shall, when the Property is listed for sale pursuant to the provisions of Section 7, (i) agree on the total cost of all capital improvements made by Pietig during the term of the Original Agreement and this Second Amended Agreement, (ii) adjust Pietig's ownership interest by adding the total cost of all capital improvements made by them to the dollar amount of their initial contribution and dividing that amount by the total of their contributions and the City's contributions to come up with revised ownership percentage, and (iii) adjust the City's ownership interest by subtracting Pietig's ownership interest from 100%.

## **7. MANDATORY SALE OF PROPERTY**

The Parties shall list the Property for sale no later than:

(a) Twenty-four (24) months following the termination of the City's employment of John Pietig, either voluntarily or involuntarily unless the separation is due to John Pietig's retirement from the City or John Pietig's death;

(b) Ten (10) years following the date of John Pietig's retirement if he retires from employment with the City;

(c) Ten (10) years following the date of John Pietig's death if he dies prior to retirement and has resided on the Property continuously between the Effective Date of this Second Amended Agreement and the date of his death; or

(d) Except in the case of John Pietig's death as specified in Subsection (c), three (3) months after the Property ceases to be John Pietig's primary place of residence as required in Section 2.

## **8. EMPLOYEE PURCHASE OF PROPERTY**

Pietig may, at any time during the term of this Second Amended Agreement, purchase the City's ownership interest in the Property. The value of the City's ownership interest shall be determined by an appraisal prepared pursuant to Exhibit A. The City shall pay the cost of the appraisal and all costs attendant to the sale if Pietig purchases the City's ownership interest in the Property, and Pietig shall pay the cost of the appraisal and other costs related to the transaction if Pietig decides not to purchase the City's ownership interest in the Property. The City Attorney and the Director of Finance and Information Technology are authorized, in conjunction with a sale of the City's interest, to negotiate, subject to City Council approval, terms and conditions of a sale that include, without limitation, incentives to Pietig in the form of deferred principal and/or interest payments,

initial or long term interest rates below market rates (but in no event more than .5% below the City's then current rate of return on invested funds) or other inducements that the City Attorney and the Director of Finance and Information Technology deem to be in the City's best interests. In the event of a proposed purchase by Pietig within eighteen (18) months after John Pietig's separation, the City Attorney and the Director of Finance and Information Technology are, in addition to one or more of the incentives described above and subject to City Council approval, also authorized to reduce the purchase price in an amount that reflects all or a portion of the then current value of the future housing assistance payments. The Parties agree that no broker(s) will be involved in the event of a purchase pursuant to this Section.

#### **9. CITY PURCHASE OF PROPERTY**

The City shall have the right to purchase Pietig's ownership interest in the Property in lieu of a sale pursuant to Section 7 or in the event Pietig, for any reason, decides to sell their ownership interest. The value of the Pietig's ownership interest shall be based on Pietig's ownership interest (as determined pursuant to Section 6 of this Second Amended Agreement) and an appraisal prepared pursuant to Exhibit A. The City shall pay the cost of the appraisal and all costs attendant to the sale. The Parties agree that no broker(s) will be involved in the event of a City purchase of Pietig's ownership interest in the Property pursuant to this Section.

#### **10. JOINT SALE OF PROPERTY**

The Parties may, at any time during the term of this Second Amended Agreement, mutually agree to sell the Property. In such event, the Parties shall list the Property with a licensed real estate broker familiar with Laguna Beach real estate. The listing price shall reflect input from the broker and any appraisal commissioned by the Parties pursuant to Exhibit B.

#### **11. DISPOSITION OF SALE PROCEEDS**

The proceeds of any sale of the Property shall be allocated to the Parties in accordance with the following:

(a) From the gross sale price, any costs of sale, including, but not limited to escrow fees, real estate broker's fees, and related expenses shall first be deducted (net proceeds of sale);

(b) From the gross sales price, the remaining balance, if any, of the New Loan to Pietig shall be repaid to the City;

(c) The Parties shall receive that portion of the net proceeds of sale that reflects their respective interests in the Property as of the date of the sale (for example, if Pietig's ownership interest is sixty percent (60%) and the net proceeds are \$1,500,000, Pietig would receive \$900,000);

(d) Pietig shall be solely responsible for the payment, out of their share of the net proceeds of sale, of the New Loan or any loan that they have incurred and for which the Property is security for payment and/or any lien recorded as a result of any action or inaction by Pietig.

## **12. TERM**

Subject to Section 13, this Second Amended Agreement shall remain in full force and effect until the Property is sold to a third party (in accordance with Section 10) or either Party purchases the other Party's share (in accordance with either Sections 8 or 9). Upon the occurrence of the first of the foregoing, this Second Amended Agreement shall automatically terminate.

## **13. ALTERNATE PROPERTY**

Notwithstanding any provision to the contrary in this Second Amended Agreement, Pietig may, during the term of this Second Amended Agreement and while John Pietig is employed by the City, elect to sell the Property and purchase another home located in the City of Laguna Beach (the "New Property"), provided the New Property is not situated within that portion of Laguna Beach located on El Toro Road known as Sycamore Hills. Upon Pietig's election and Pietig's compliance with the terms and conditions of this Second Amended Agreement, the Parties agree to that this Second Amended Agreement shall be considered modified to apply to the New Property with terms and conditions consistent with this Second Amended Agreement, subject only to the following: (i) the City's assistance with respect to the New Property shall be limited to the lesser of \$400,000.00 or 42.11% of the purchase price for the New Property; (ii) the proceeds of the sale of the Property shall be divided in accordance with Section 11, provided that Pietig shall solely be responsible for the payment of all transaction Costs, except for any brokerage commission(s), which shall be shared based on the Parties' respective ownership percentages of the Property; (iii) the City shall have the right to disapprove the sale of the Property and the purchase of the New Property if the City's net proceeds from the sale of the Property is less than \$400,000.00; and (iv) Pietig shall be solely responsible for the payment of all transaction costs in connection with the purchase of the New Property. The City Attorney and the Director of Finance and Information Technology shall ensure that any transaction related to a New Property comply with the provisions of this Section; but in the event of compliance, no further City review or approval is required.

## **13. SUCCESSORS**

(a) This Agreement is intended to and shall bind the Parties, their successors, heirs and personal representatives, and is not assignable by either Party without the express written consent of the other Party.

(b) The intent of the Parties is that, in the event John Pietig dies prior to the expiration of the term of this Second Amended Agreement, Peggy Pietig shall be entitled to the same benefits and be subject to the same obligations that she and John Pietig would have been entitled had he survived. (For example, Peggy Pietig shall be entitled to reside on the Property for ten (10) years from the date of John Pietig's death if he dies prior to retirement, and after the expiration of then ten (10) year period Peggy Pietig would then be obligated to list the Property for sale pursuant to Section 7. In the event John Pietig dies after retirement, Peggy Pietig shall be entitled to reside on, and to the exclusive use of, the Property until ten (10) years from the date of John Pietig's retirement and is then required to list the Property for sale pursuant to Section 7.) Peggy Pietig shall comply with all terms and conditions of this Second Amended Agreement during the time she is entitled to exclusive use of the Property, including the duty to repair and maintain the Property.

(c) Pietig shall have the right to place their ownership interest in the Property into a family trust or any similar estate planning vehicle.

#### **14. VOLUNTARY**

The Parties, and each of them, freely and voluntarily have entered into and executed this Second Amended Agreement, and they warrant and represent they are not aware of any duress, fraud, coercion or undue influence which has caused them to enter into and execute this Second Amended Agreement. The Parties, and each of them, represent they have carefully read and fully understand all of the provisions of this Second Amended Agreement.

#### **15. LEGAL COUNSEL**

The Parties, and each of them, acknowledge that in entering into and executing this Second Amended Agreement, they have each had the opportunity to seek and receive independent legal advice as to their respective legal rights and they certify that they have read this Second Amended Agreement and fully understand all of its terms and contents.

#### **16. ENTIRE UNDERSTANDING**

This Second Amended Agreement contains the entire agreement and understanding between the Parties concerning the subject matter and supersedes any and all prior or contemporaneous agreements or understandings between them. The Parties, and each of them, declare that no promise, representation or agreement not expressly stated in this Second Amended Agreement has been made to them to induce them to execute this Second Amended Agreement. This Second Amended Agreement may only be modified or changed by a written agreement executed by both Parties.



**17. GOVERNING LAW**

The Parties, and each of them, agree that this Second Amended Agreement shall be governed by and interpreted under the laws of the State of California and shall be construed as if it were jointly drafted by the Parties.

**18. NO GUARANTEE**

The Parties agree that nothing in this Second Amended Agreement shall alter the nature or characterization of John Pietig's employment with the City, nor shall this Second Amended Agreement be construed as a guarantee of John Pietig's employment for any specific time period.

**19. CITY COUNCIL**

While John Pietig is the City Manager, the City Attorney and the Director of Finance and Information Technology shall be responsible for administering the provisions of this Second Amended Agreement. The City Attorney and the Director of Finance and Information Technology shall have the right to obtain input from City staff relative to the administration and may, with City Council approval, retain professionals to assist in administering this Second Amended Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Second Amended Agreement on the date first set forth above.

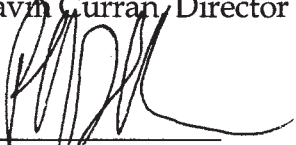
PIETIG

By:   
John Pietig

By:   
Peggy Pietig

CITY OF LAGUNA BEACH

  
By Gavin Curran, Director of Finance and Information Technology

  
By Philip Kohn, City Attorney

ATTEST:   
Lisette Chel, City Clerk