



City of San Leandro

Meeting Date: September 15, 2014

Staff Report

File Number: 14-342

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for a Resolution Approving First Amendment to HOME Investment Partnerships Program (HOME) Funds Loan Agreement, Promissory Note, Deed of Trust, and Regulatory Agreement and Authorizing Execution of First Amendment to Loan Agreement and Regulatory Agreement with Alameda Housing Associates, L.P. and Update on the Affordable Rental Housing Project (Cornerstone Apartments) Located at 1400 San Leandro Boulevard

SUMMARY AND RECOMMENDATIONS

In July 2012, the City approved a \$650,000 federal HOME Investment Partnerships Program (HOME) funds loan to Alameda Housing Associates, L.P. to assist in the construction of the Cornerstone Apartments (Cornerstone), a 200-unit affordable rental housing project located at 1400 San Leandro Boulevard. These federal HOME funds supplement the \$9.1 million former Redevelopment Agency of the City of San Leandro (RDA) Housing Set-Aside Funds loan funding the City approved in 2009 for the project. Due to changes to the project that caused it to become a multi-phased project that increases from 100 to 200 affordable rental units, the HOME Loan Agreement and related Regulatory Agreement, Promissory Note, and Deed of Trust, require modification. The City Council approved similar amendments to the Owner Participation and Loan Agreement for the \$9.1 million in December 2013.

Staff recommends that the City Council approve the resolution authorizing the execution of the First Amendment to the HOME Loan Agreement for the Cornerstone Apartments project.

Staff recommends that the City Council permit BRIDGE Housing Corporation, the non-profit developer, to provide a brief project update on the Cornerstone Apartments project.

BACKGROUND

The primary purposes for modifying the existing 2012 HOME Loan Agreement are to update language in the original version and to reflect the current project scope. The key features for

the 200-unit Cornerstone project are:

Phase 1

- 115 workforce/family rental units: 8 studios, 49 one-bedroom, 22 two-bedroom and 36 three-bedroom. Two on-site managers' units are included in the 115 units.
- Amenities: Approximately 408 on-site parking spaces for Phases 1 and 2 to serve residents, childcare users and BART patrons; a ground floor childcare center with outdoor play area; on-site laundry amenities; a management office; bicycle storage; landscaped courtyard; community room; small ground floor retail space; and a BART lobby.

Phase 2

- 85 rental units for low income seniors: 77 one-bedroom and 8 two-bedroom. An on-site manager's unit is included in the 85 units.

Analysis

Below are the notable revisions under the proposed amendments to the HOME Loan Agreement and related agreements and documents:

- 1) The HOME loan funds will be designated solely to the 115 workforce/family rental units that will be constructed in Phase 1 instead of the originally planned 200 units. BRIDGE Housing Corporation (BRIDGE) plans to identify other financing options for the 85 units for seniors in Phase 2 after completion of Phase 1 in 2016.
- 2) The term of the loan is extended from 20 years to 55 years. The annual simple interest of 3% remains unchanged.
- 3) BRIDGE may use HOME funds for predevelopment costs, in addition to construction costs.
- 4) BRIDGE may terminate the HOME Loan Agreement if it is unable to acquire the property from BART.
- 5) The HOME loan will be secured by a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing rather than the originally executed Deed of Trust because BRIDGE will only have a leasehold interest on the 1400 San Leandro Boulevard site, which will be leased from BART.

Previous Actions

- April 6, 2009 - City Council approved the OPLA for a \$9.1 million Housing Set-Aside Loan to BRIDGE Housing for a 100-unit affordable rental housing development ("The Alameda").
- July 20, 2009 - City Council approved planning entitlements and environmental clearance under CEQA for the Cornerstone at 1400 San Leandro Boulevard and BART replacement

parking.

- April 9, 2012 - Staff from the City's Community Development Department, BRIDGE Housing, Westlake Development Partners, and OSISOFT presented a revised San Leandro Crossings Master Plan at a City Council Work Session.
- June 18, 2012 - City Council approved amendments to the OPLA primarily related to outstanding issues/concerns with the State at the time. However, these amendments became unnecessary once the City, BRIDGE and the State resolved all issues relating to Proposition 1C grant funding requirements. Therefore, neither the City nor BRIDGE executed the 2012 amended OPLA.
- July 16, 2012 - City Council approved a federal HOME loan agreement for BRIDGE Housing Corporation for \$650,000.
- May 16, 2013 - BRIDGE and City staff presented to the City Council the development scope of work and architectural designs for the current 200 unit affordable rental housing development including a Phase 1 (115 workforce/family units) and Phase 2 (85 senior units).
- December 2, 2013 - City Council approved the First Amendment to the OPLA and Regulatory Agreement.

Applicable General Plan Policies

- **Policy 3.01: MIX OF UNIT TYPES**
Encourage a mix of residential development types in the City, including single family homes on a variety of lot sizes, as well as townhomes, row houses, live-work units, planned unit developments, and multi-family housing.
- **Policy 3.02: MIX OF PRICE RANGES**
Encourage a mix of price ranges to provide housing choices for San Leandro residents of all incomes and ages. Opportunities to include affordable units and market rate units within the same development projects should be pursued.
- **Policy 3.03: AFFORDABLE HOUSING DESIGN**
Design new affordable housing to blend in with the existing fabric of the community. Affordable housing should be located in a variety of neighborhoods rather than concentrated in one particular part of the City.
- **Policy 3.04: PROMOTION OF INFILL**
Encourage infill development on vacant or underused sites within residential areas.
- **Policy 3.05: MIXED USE ON TRANSIT CORRIDORS**
Encourage mixed use projects containing ground floor retail and upper floor residential uses along major transit corridors. Such development should be pedestrian-oriented, respect the scale and character of the surrounding neighborhood, and incorporate architectural themes that enhance the identity of adjacent commercial districts.

- **Policy 3.06: HOUSING BY NON-PROFIT DEVELOPERS**

Promote the participation of non-profit housing organizations in the construction of new affordable housing in San Leandro, with particular emphasis on housing for seniors and working families.

- **Policy 3.07: AMENITIES AND SOCIAL SERVICES WITHIN NEW HOUSING**

Encourage new affordable housing development to provide amenities for future residents, such as on-site recreational facilities and community meeting space. Where feasible, consider the integration of social services such as child care within such projects.

- **Policy 3.10: CONVERSION OF NON-RESIDENTIAL LAND TO HOUSING & PUBLIC USES**

Encourage the development of new housing on underutilized commercial and industrial sites which meet key criteria including:

- Sites on the edges of commercial or industrial areas, adjacent to established residential areas.
- Sites with adequate infrastructure, access, and road capacity.
- Sites which are not constrained by external environmental factors, including freeway, railroad, and airport noise.
- Sites where conflicts with surrounding uses would not be created in the event of re-use.

- **Policy 53.04: INCLUSIONARY HOUSING**

Require the inclusion of affordable housing in new housing developments - both inside and outside of the redevelopment project areas.

- **Policy 53.06: NEW RENTAL HOUSING**

Strongly encourage the development of additional rental housing in the City, including both market rate units and affordable units.

Environmental Review

Pursuant to the National Environmental Protection Act (NEPA), the appropriate level of environmental review for the proposed Cornerstone project has been completed.

Legal Analysis

The staff report, resolution, and the amended HOME Loan Agreement and related documents have been reviewed and approved as to form by the City Attorney's Office.

Fiscal Impacts

The amended HOME Loan Agreement does not change the \$650,000 loan amount which the City approved in 2012 under the original HOME Loan Agreement.

Budget Authority

Budget authority for the Resolution comes from the Federal HOME Investment Partnerships

(HOME) Program (under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended).

ATTACHMENTS

Attachments to Resolution

- First Amendment to HOME Loan Agreement
- Promissory Note
- Leasehold Deed of Trust
- Regulatory Agreement

PREPARED BY: Steve Hernandez, Housing Specialist II, Community Development Department



City of San Leandro

Meeting Date: September 15, 2014

Resolution - Council

File Number: 14-343

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: RESOLUTION Approving the First Amendment to a HOME Investment Partnerships Program (HOME) Funds Loan Agreement, Promissory Note, Deed of Trust, and Regulatory Agreement and Authorizing Execution of the First Amendment to the Loan Agreement and Regulatory Agreement with Alameda Housing Associates, L.P. for the Affordable Rental Housing Project (Cornerstone Apartments) Located at 1400 San Leandro Boulevard (updates language in the original version and to reflect the current project scope and extends the loan term from 20 to 55 years at 3% annual simple interest)

WHEREAS, in July 2012 the City of San Leandro (the "City") approved a \$650,000 federal HOME Investment Partnerships Program ("HOME") loan to Alameda Housing Associates, L.P. (the "Developer") to assist in the construction of the Cornerstone Apartments, an affordable rental housing project located at 1400 San Leandro Boulevard (the "Project"); and

WHEREAS, on July 24, 2013, the City and the Developer entered into a Loan Agreement therefor; and

WHEREAS, subsequently the Project description was modified, Borrower acquired or will acquire a leasehold interest in the property on which the Project is to be located, and other modifications to the Loan Agreement and certain of its exhibits were requested by Borrower, as more fully described in the accompanying staff report; and

WHEREAS, City staff and Developer have negotiated a First Amendment to HOME Loan Agreement; a Promissory Note; a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Leasehold Deed of Trust"), and a Regulatory Agreement, each in the form attached hereto and incorporated herein by reference; and

WHEREAS, the appropriate level of review for the Project, as described in the First Amendment to HOME Loan Agreement, has been completed pursuant to the National Environmental Protection Act ("NEPA").

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. The above recitals are true and correct and incorporated into this Resolution.
2. The City Council approves the First Amendment to HOME Loan Agreement, Promissory Note, Leasehold Deed of Trust, and Regulatory Agreement, substantially in the form attached hereto.
3. The City Council authorizes the City Manager to execute the First Amendment to HOME Loan Agreement and the Regulatory Agreement, substantially in the form attached hereto, with such modifications as may be approved by the City Manager in consultation with the City Attorney.
4. The City Council authorizes the City Manager to take all actions, and to execute, deliver and record such other documents with such modifications as may be approved by the City Manager in consultation with the City Attorney, as are necessary to carry out the intent of this Resolution.

FIRST AMENDMENT TO HOME LOAN AGREEMENT

THIS FIRST AMENDMENT TO HOME LOAN AGREEMENT (this "Amendment") is effective as of _____, 2014 by and between the City of San Leandro, a California municipal corporation ("City") and Alameda Housing Associates, L.P., a California limited partnership ("Borrower"). City and Borrower are hereinafter collectively referred to as the "Parties."

RECITALS

A. The City and Borrower entered that certain HOME Loan Agreement dated July 24, 2012, pursuant to which the City is loaning Six Hundred Fifty Thousand Dollars (\$650,000) in HOME funds to Borrower ("Agreement").

B. Since the execution of the Agreement, the "Project" has been modified as follows: the Project shall include one hundred fifteen (115) units of affordable housing, and; the Project will be located on Borrower's leasehold interest in that certain real property more particularly described in the attached Exhibit A. As used in this Agreement, the "Property" shall mean Borrower's leasehold interest in the property described in Exhibit A. In addition the City and Borrower have agreed that a portion of the HOME funds may be used to pay for certain Project soft-costs prior to Borrower's acquisition of the Property.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. The second and third sentences of Section 1.0 of the Agreement are amended and restated as follows:

"The Loan shall be evidenced by a promissory note executed by Borrower substantially in the form attached hereto as Exhibit C, bearing simple interest at the rate of three percent (3%) per annum with a term of fifty-five (55) years. The Borrower and City agree that until such time as the Borrower acquires the Property, the Loan will be secured by that certain Assignment of Agreements plans and Specifications dated June 25, 2009 between Borrower and City, as housing successor to the former Redevelopment of the City of San Leandro ("Assignment Agreement"). The Assignment Agreement was entered into in connection with the OPLA. Following Borrower's acquisition of the Property, the Loan will be secured by a leasehold deed of trust substantially in the form attached hereto as Exhibit D, which will be recorded against the Property at the Borrower's construction loan closing for the Project (the "Construction Closing")."

2. The following language is added to Section 1.1:

"Notwithstanding anything to the contrary in this Agreement, provided that Borrower is not in default under this Agreement, Borrower may terminate this Agreement under the circumstances set forth below by giving written notice of such termination to the City on or prior to Borrower's acquisition of the Property:

(i) The Borrower is unable to acquire the Property, despite Borrower's good faith efforts;

Provided that Borrower is not in default under this Agreement, if Borrower elects to terminate this Agreement as set forth above, and upon Borrower's delivery to City of all Assigned Documents (as defined in the Assignment Agreement), the City shall forgive all amounts owed to City pursuant to this Loan Agreement.

3. The last sentence of Section 1.3 is amended and restated to read: "Draws from replacement reserves in excess of \$10,000 shall be subject to City approval."

4. The following is added to the end of Section 1.6: "The City agrees that the Borrower may use the Loan Funds for the predevelopments costs set forth in Exhibit E, provided that Borrower has submitted documentation to City evidencing that the Project has been awarded tax credit financing."

5. Section 1.9 is amended and restated as follows:

"The Borrower shall execute, and pledges to operate the development in compliance with, a Regulatory Agreement substantially in the form attached as Exhibit F which shall restrict eleven (11) of the units in the Project for occupancy by Very Low- Income Households at affordable rents (as more particularly described in the Regulatory Agreement) for twenty (20) years. The Regulatory Agreement shall be recorded in the Official Records of Alameda County at Construction Closing."

6. The following language is added to the end of Section 1.10.1:

"Notwithstanding Section 1.10.1(i) through (xii), the City shall disburse to Borrower up to Six Hundred Fifty Dollars (\$650,000) in HOME Funds to reimburse Borrower for the costs set forth on Exhibit E provided that the Borrower (a) provides invoices evidencing such costs to the City, in a form reasonably acceptable to the City, (b) provides City with documentation that Borrower has been awarded tax credit financing for the Project and (c) satisfies the conditions set forth in Section 1.10.1 (ii), (iv), (vi) with respect to property (as may be applicable) and liability insurance, (vii) and (viii)."

7. Exhibits A, B, C, and D to the Agreement are replaced in their entirety with the Exhibits A, B C, and D that are attached to this Agreement.

8. Section 5.12 is amended and restated as follows:

"This Agreement, together with Exhibits A through F attached hereto and incorporated herein by reference, and the agreements referenced herein, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements with respect thereto."

9. Except as expressly modified by this Amendment, all other provisions of the Agreement are unmodified and continue in full force and effect.

10. This Amendment may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

CITY

CITY OF SAN LEANDRO,
a municipal corporation

By: _____
Chris Zapata, City Manager

ATTEST:

By: _____
Marian Handa, City Clerk

APPROVED AS TO FORM:

By: _____
Richard Pio Roda, City Attorney

BORROWER

ALAMEDA HOUSING ASSOCIATES, L.P.,
a California limited partnership

By: Alameda Housing, LLC, a California limited liability company

Its: General Partner

By: MCB Family Housing, Inc., a California nonprofit public benefit corporation

Its: Sole Member

By: _____

Name: _____

Title: _____

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

Exhibit B

SCOPE OF WORK

The Project shall consist of a 115-unit multi-family residential development that will include four (4) dwelling units that will be accessible to persons with disabilities, common areas including a lobby, a multi-purpose room with kitchen, a landscaped outdoor courtyard, podium and underground parking consisting of approximately 115 spaces, approximately 5000 square feet of retail (including a potential child care center) bicycle storage; laundry facilities; a management office; and landscaping.

Exhibit C

PROMISSORY NOTE

Exhibit D

DEED OF TRUST

Exhibit E

APPROVED COSTS

Exhibit F

REGULATORY AGREEMENT

PROMISSORY NOTE

CITY OF SAN LEANDRO HOME INVESTMENT PARTNERSHIPS ("HOME") PROGRAM

\$650,000

_____, 2014
San Leandro, California

FOR VALUE RECEIVED, Alameda Housing Associates, L.P., a California limited partnership ("**Borrower**"), promises to pay to the City of San Leandro, a California municipal corporation ("**City**") the principal sum of Six Hundred Fifty Thousand Dollars (\$650,000), or so much thereof as may be advanced by City, together with interest as provided herein. The outstanding principal balance of this promissory note (this "**Note**") shall bear simple interest at the rate of three percent (3%) per annum commencing upon the date of disbursement.

1. Loan. This Note is executed pursuant to that certain HOME Loan Agreement dated as of July 24, 2012 and amended on _____, 2014 and executed by and between Borrower and City (the "**Loan Agreement**"). Capitalized terms used without definition herein shall have the meanings ascribed to such terms in the Loan Agreement. Borrower will use the proceeds of the Loan for project costs as described in the Loan Agreement (the "**Project**").

2. Security. Payment of this Note is secured by an Assignment of Agreements Plans and Specifications between Borrower and City dated June 25, 2009 (the "**Assignment Agreement**"). Following Borrower's acquisition of the Property, payment of this Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "**Deed of Trust**") dated as of even date herewith and executed by Borrower as Trustor for the benefit of City as Beneficiary. In connection with the Loan, the Borrower and City entered into a Regulatory Agreement (the "**Regulatory Agreement**") dated as of even date herewith that sets forth certain limitations on household incomes and rent for the HOME assisted units. The Deed of Trust and the Regulatory Agreement shall be recorded against the Property and the Project concurrently with the Construction Closing.

3. Maturity Date; Payments. The entire outstanding principal balance of this Note, together with interest accrued thereon and any other sums accrued hereunder shall be payable in full on the date (the "**Maturity Date**") which is the earlier of: (i) the fifty-fifth (55th) anniversary of the date upon which the City issues a final certificate of occupancy for the Project, or (ii) the fifty-ninth (59th) anniversary of the date of the Loan Agreement. By no later than June 1 of each year following the issuance of a final certificate of occupancy or equivalent for the Project, Borrower shall pay to City fifty percent (50%) of all Surplus Cash (as defined in and subject to the provisions of Section 1.2 (and subsections thereof) of the Loan Agreement) to reduce the indebtedness owed under this Note. Notwithstanding the foregoing, if other public agency lenders (including the City under the OPLA) provide Project financing that requires repayment from residual receipts or surplus cash, then City shall share fifty percent (50%) of the Surplus Cash with such other public agencies in accordance with the program rules and regulations applicable to such public agency loan or in a proportion to be determined by agreement with such agencies. Payments shall be made in lawful money of the United States to City at 835 East

14th Street, San Leandro, California 94577, Attention: Finance Department. The place of payment may be changed from time to time as the City may from time to time designate in writing.

Notwithstanding anything to the contrary in this Note, provided that Borrower is not in default under this Note, Borrower may terminate this Note under the circumstances set forth below by giving written notice of such termination to the City on or prior to Borrower's acquisition of the Property:

(i) The Borrower is unable to acquire the Property, despite Borrower's good faith efforts.

Provided that Borrower is not in default under this Note, if Borrower elects to terminate this Note as set forth above, and upon Borrower's delivery to City of all Assigned Documents (as defined in the Assignment Agreement), the City shall forgive all amounts owed to City pursuant to this Note.

4. Prepayment. Borrower shall have the right to prepay this Note in whole or in part without penalty or premium.

5. Default. The occurrence of any of the following shall constitute an event of default under this Note, subject to the cure periods set forth in Section 6 below: (i) Borrower fails to pay any amount due hereunder within fifteen (15) days of its due date; (ii) any default by Borrower under the Deed of Trust, the Regulatory Agreement or the Loan Agreement and remains uncured beyond the expiration of the applicable cure period; and (iii) any sale, exchange, transfer, assignment or other conveyance of the Project in violation of the Loan Agreement.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the City, the entire unpaid principal owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of such option with respect to any subsequent event. The City's failure in the exercise of any right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any other right or remedy, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

6. Notice of Default; Cure Periods. The City shall not exercise any right or remedy provided herein because of any default of Borrower unless, in the event of a monetary default, Borrower shall have failed to pay the outstanding sums within thirty (30) calendar days after notice to Borrower and Borrower's limited partner that payment was due, or in the event of a nonmonetary default, the City shall have first given written notice thereof to Borrower and Borrower's limited Partner and Borrower shall have failed to cure the nonmonetary default within a period of sixty (60) days after the giving of such notice of such default; provided that, if the nonmonetary default cannot be cured within days and Borrower s proceeds diligently to cure such default until it shall be fully cured within no more than one hundred twenty (120) days after the giving of such notice, the City shall not exercise any right or remedy provided for herein until such one hundred twenty (120) period shall expire; provided however, the City shall not be

required to give any such notice or allow any grace period if Borrower shall have filed a petition in bankruptcy or for reorganization, or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if Borrower shall have made an assignment for the benefit of creditors, or if a receiver or trustee is appointed for Borrower and such appointment or such receivership is not terminated within sixty (60) days. Notwithstanding anything to the contrary contained herein, the Beneficiary hereby agrees that any cure of any default made or tendered by one or more of Trustor's limited partners shall be deemed to be a cure by Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor.

7. Waiver. Borrower and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without in any way affecting or discharging this liability.

8. Attorneys' Fees. Borrower agrees to pay immediately upon demand all costs and expenses of the City including reasonable attorneys' fees if: (i) after a default hereunder or under the Deed of Trust, the Regulatory Agreement, or the Loan Agreement and following the expiration of applicable notice and cure periods, the City finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Borrower, any guarantor, or any other party liable therefor, or to the protection of its rights under this Note, the Deed of Trust, the Regulatory Agreement, or the Loan Agreement, or (ii) the City seeks to have the Project abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

9. Enforcement. If the City shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the Project or the title thereto or the interest of the City under the Deed of Trust, including without limitation, any form of condemnation or eminent domain proceeding, the City shall be reimbursed by Borrower immediately upon demand for all costs, charges, and reasonable attorneys' fees incurred by the City in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Project.

10. Notices. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the addresses set forth in the Loan Agreement or at such address as either party may designate by written notice.

11. Binding on Successors. This Note shall be binding upon Borrower, its successors and assigns.

12. Non-Recourse. This Note is nonrecourse and neither Borrower nor any member, officer, partner or employee of Borrower shall have any personal liability for repayment of the sums evidenced hereby, and the City must resort only to the Project for repayment should the Borrower fail to repay the sums evidenced hereby.

13. Governing Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

14. Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written above.

Alameda Housing Associates, L.P., a California limited partnership

By: Alameda Housing, LLC, a California limited liability company

Its: General Partner

By: MCB Family Housing, Inc., a California nonprofit public benefit corporation

Its: Sole Member

By: _____

Name: _____

Title: _____

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attn: City Manager

NO FEE FOR RECORDING PURSUANT TO
GOVERNMENT CODE SECTION 27383

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

**CITY OF SAN LEANDRO
HOME INVESTMENT PARTNERSHIPS ("HOME") PROGRAM**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Deed of Trust**") is made as of this [REDACTED] day of [REDACTED], 2014, by and among Alameda Housing Associates, L.P., a California limited partnership ("**Trustor**"), North American Title Company ("**Trustee**"), and the City of San Leandro, a California municipal corporation ("**Beneficiary**").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's leasehold interest in the property located in the City of San Leandro, County of Alameda, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "**Property**") (as used in this Deed of Trust, Property shall mean Trustor's leasehold interest in the Property);

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH the rents, issues, and profits of the Property, subject, however, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, building permits, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by and proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Section 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "**Security.**" To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

The provisions of this Deed of Trust shall become effective following the Trustor's acquisition of the Property.

FOR THE PURPOSE OF SECURING:

A. Payment of just indebtednesses of Trustor to Beneficiary as set forth in the Note (defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Note. Said Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced;

B. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined in Section 1.1 below).

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR
COVENANTS AND AGREES:

ARTICLE 1. **DEFINITIONS**

1.1 In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

A. "**Loan Agreement**" means that certain Loan Agreement dated as of July 24, 2012 and amended on ____, 2014, executed by and between the Trustor and Beneficiary, providing for the Beneficiary to loan to Trustor Six Hundred Fifty Thousand Dollars (\$650,000) for the development of the Property.

B. "**Loan Documents**" means this Deed of Trust, the Loan Agreement, the Note, and the Regulatory Agreement.

C. "**Note**" means that certain promissory note in the amount of Six Hundred Fifty Thousand Dollars (\$650,000) dated as of even date herewith, executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust.

D. "**Regulatory Agreement**" means that certain Regulatory Agreement, dated as of even date herewith, executed by and between Trustor and Beneficiary, and which sets forth the household income and rent restrictions for the HOME assisted units.

ARTICLE 2. **MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY; ASSIGNMENT OF RENTS**

2.1 Maintenance and Modification of the Property by Trustor. The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation

of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Alameda County, a surety bond in an amount one and one half (1½) times the amount of such claim item to protect against a claim of lien.

2.2 Granting of Easements. Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, cable, telephone and telegraph, an easement for the paseo adjacent to the Property, , those approved by Beneficiary or those required by law. As to these exceptions, Beneficiary will grant and/or direct the Trustee to grant such easements.

2.3 Assignment of Rents. The provisions of this Section 2.3 shall be subject to the rights of senior lenders, as part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the sums secured by this Deed of Trust with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to

rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

With the exception of an assignment of rents to other project lenders approved by Beneficiary, Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Deed of Trust pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure indebtedness held by Beneficiary.

ARTICLE 3. **TAXES AND INSURANCE; ADVANCES**

3.1 Taxes, Other Governmental Charges and Utility Charges. Trustor shall pay, or cause to be paid, at least fifteen (15) days prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

3.2 Provisions Respecting Insurance. Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be

in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust.

3.3 Advances. In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4. **DAMAGE, DESTRUCTION OR CONDEMNATION**

4.1 Awards and Damages. Subject to the rights of senior lenders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property ("**Funds**") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender. Notwithstanding the provisions of this Section, the Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor has sufficient funds to rebuild.

ARTICLE 5. **AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST**

5.1 Other Agreements Affecting Property. The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan

Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

5.2 Agreement to Pay Attorneys' Fees and Expenses. In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

5.3 Payment of the Principal. The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

5.4 Personal Property. To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

5.5 Financing Statement. The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

5.6 Operation of the Security. The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

5.7 Inspection of the Security. At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

5.8 Nondiscrimination. The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice

or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

ARTICLE 6. **HAZARDOUS MATERIALS**

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "**Hazardous Materials**") except such of the foregoing as are used in construction of the improvements to be constructed on the Property or as may be customarily kept and used in and about residential property.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("**Hazardous Materials Law**"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "**Hazardous Materials Claims**"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 *et seq.* or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its councilmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (b)) all reasonable costs and expenses incurred by Beneficiary in connection with clause (a), including but not limited to reasonable attorneys' fees.

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgment, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten

percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7. **EVENTS OF DEFAULT AND REMEDIES**

7.1 Events of Default. The following shall constitute Events of Default: (1) failure to make any payment to be paid by Trustor under the Loan Documents following expiration of applicable notice and cure periods; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination following the expiration of applicable notice and cure periods; or (3) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments or regulatory agreement secured by the Property; which defaults shall not be cured within the times and in the manner provided therein.

7.2 Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid Principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right. Notwithstanding anything to the contrary contained herein, the Beneficiary hereby agrees that any cure of any default made or tendered by one or more of Trustor's limited partners shall be deemed to be a cure by Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor.

7.3 The Beneficiary's Right to Enter and Take Possession. If an Event of Default shall have occurred and be continuing, the Beneficiary may:

A. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

B. Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

C. Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("**Notice of Default and Election to Sell**"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Alameda County; or

D. Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

7.4 Foreclosure By Power of Sale. Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "**Notice of Sale**") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

A. Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

B. After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other amounts owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

C. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

7.5 Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor

therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

7.6 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

7.7 No Waiver.

A. No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

B. If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (iv) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

7.8 Suits to Protect the Security. The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and

(c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

7.9 Trustee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

7.10 Waiver. The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under the Note or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8. **MISCELLANEOUS**

8.1 Amendments. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

8.2 Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

8.3 Notices. If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid at the addresses specified below, as such may be modified pursuant to the Loan Agreement.

TRUSTOR: Alameda Housing Associates, L.P.
 345 Spear Street, Suite 700
 San Francisco, CA 94105
 Attention: President

BENEFICIARY: City of San Leandro
 835 East 14th Street
 San Leandro, CA 94577
 Attention: City Manager

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

8.4 Successors and Joint Trustors. Where an obligation is created herein binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

8.5 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

8.6 Invalidity of Certain Provisions. Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

8.7 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

8.8 Gender and Number. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

8.9 Deed of Trust, Mortgage. Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

8.10 Actions. Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

8.11 Substitution of Trustee. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in

the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

8.12 Statute of Limitations. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

8.13 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

8.14 Tax Credit Requirement. Notwithstanding anything to the contrary contained herein or in any documents secured by this deed of trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the property encumbered by this deed of trust, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the regulatory agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

[SIGNATURE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR

Alameda Housing Associates, L.P.,
a California limited partnership

By: Alameda Housing, LLC, a California limited liability company

Its: General Partner

By: MCB Family Housing, Inc., a California nonprofit public benefit corporation

Its: Sole Member

By: _____

Name: _____

Title: _____

State of California)
)
County of Alameda)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
(Attach Legal Description)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attn: City Manager

NO FEE FOR RECORDING PURSUANT TO
GOVERNMENT CODE SECTION 27383

REGULATORY AGREEMENT

CITY OF SAN LEANDRO HOME INVESTMENT PARTNERSHIPS ("HOME") PROGRAM

This Regulatory Agreement (this "**Regulatory Agreement**") is made as of this [REDACTED] day of [REDACTED], 2014, by and between the City of San Leandro, a California municipal corporation (the "**City**") and Alameda Housing Associates, L.P., a California limited partnership ("**Developer**").

RECITALS

A. Developer has the right to lease certain real property identified as Assessor's Parcel No. 075-0039-007-05 in the City of San Leandro, County of Alameda, as more particularly described on Exhibit A attached hereto and incorporated herein by reference. As used in this Agreement, the "Property" shall mean Developer's leasehold interest in the property described in Exhibit A. Developer will develop one hundred fifteen (115) multifamily residential units on the Property (the "**Development**").

B. Developer has applied to the City for, and the City has agreed to provide to Developer, a loan in the amount of Six Hundred Fifty Thousand Dollars (\$650,000) (the "**Loan**") to assist Developer in the construction of the Development in accordance with the terms and conditions set forth in that certain HOME Program Loan Agreement dated as of July 24, 2012 and amended on _____, 2014 and executed by and between City and Developer (the "**Loan Agreement**").

C. The Loan will be provided by the City under the HOME Investment Partnerships Program (the "**HOME Program**") administered by the City pursuant to federal regulations governing the HOME Program (42 U.S.C. 12741 *et seq.* and 24 CFR Part 92, all as amended and in effect from time to time).

D. As a condition to the Loan, the City requires Developer to execute this Regulatory Agreement which will restrict eleven (11) of the residential units in the Development ("**Assisted Units**") to ensure that such units are occupied by eligible households at affordable rents as

described herein for the term of this Regulatory Agreement. All Assisted Units will be rented at affordable rents to households who qualify as Very-Low Income Households.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Regulatory Agreement.
2. Definitions. For the purpose of this Regulatory Agreement the following definitions shall apply:
 - a. "Area Median Income" means the median income for Alameda County, California, as published from time to time by the U.S. Department of Housing and Urban Development (HUD).
 - b. "Assisted Unit" means a dwelling unit, the development of which is assisted with funds provided through the HOME Program pursuant to the Loan Agreement.
 - c. "HOME Rents" means rents calculated annually by HUD and are the following: Thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for imputed household size pursuant to Section 7 below ("Low HOME Rents").
 - d. "HUD" means the United States Department of Housing & Urban Development.
 - e. "Rent" means all charges, other than deposits, paid by the tenant for the use and occupancy of an assisted unit and any mandatory charge for direct or supportive tenant services in a rental housing development, including a utility allowance in an amount determined by HUD.
 - f. "Very Low-Income Household" means a household whose gross household income is fifty percent (50%) or less of the Area Median Income, adjusted for actual household size.
3. Compliance with Program Requirements. Developer agrees that at all times its acts regarding the Development and the use of funds provided pursuant to the Loan Agreement shall be in conformity with all provisions of the HOME Program including the statutes, rules and regulations and such policies and procedures of the City and of HUD pertaining thereto. Developer acknowledges that it is familiar with such applicable provisions and has been professionally advised to the extent necessary for the purpose of enabling Developer to comply fully with such provisions.
4. Term of Regulatory Agreement. The term of this Regulatory Agreement and the Developer's obligations hereunder shall commence upon recordation of this Regulatory Agreement in the Official Records of Alameda County, and this Regulatory Agreement shall remain in full force and effect through and including the date which is twenty (20) years following the date of recordation of this Regulatory Agreement, unless terminated earlier pursuant to the terms of this Regulatory Agreement.

5. Assisted Unit Schedule. Subject to Section 8 below, Developer shall cause all Assisted Units to be rented only in accordance with this Agreement and the Schedule of Assisted Units set forth in Exhibit B, attached hereto and incorporated herein.

6. Tenant Selection Standards. Subject to Section 8 below, Developer shall cause all Assisted Units in the Development to be rented only to eligible households based on the following schedule: eleven (11) units for Very-Low Income Households. The Assisted Units shall be floating units.

7. Rents.

a. Subject to Section 8 below, Allowable Rents shall not exceed the following: for Very Low- Income Households - Low HOME Rents. For purposes of computing Rent, the imputed household size shall be 1.5 persons per bedroom.

b. Subject to Section 8 below, All Assisted Units must be occupied by Very Low-Income Households paying rents that are no greater than the Low HOME Rents.

8. Certification of Tenant Income and Household Size; Increased Income.

a. The income and household size of all households occupying Assisted Units shall be certified by Developer prior to occupancy and re-certified annually thereafter.

b. If upon recertification, Developer determines that a tenant's household income exceeds the upper limit for the income category in which the tenant originally qualified, then subject to compliance with the requirements of other state or federal funding sources, including Section 42 of the Internal Revenue Code, the tenant shall be allowed to remain in occupancy, but upon expiration of the tenant's lease and upon sixty (60) days written notice: (i) if the tenant qualifies as eligible under a different household income category, rent may be charged at the level appropriate for that income level, and (ii) if the tenant's household income exceeds the limit for eligibility under this Agreement, the rent charged to the tenant may be increased to the lesser of one-twelfth (1/12th) of thirty percent (30%) of such tenant's income or fair market rent (but not to exceed the maximum rent permitted pursuant to federal regulations applicable to low income housing tax credits). In each case, the next available comparable unit shall be rented to a household that qualifies under the income category under which the tenant originally qualified.

9. [Reserved.]

10. Nondiscrimination. Developer shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Development on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. Developer shall otherwise comply with all applicable local, state and federal laws concerning discrimination in housing. Developer agrees to comply, to the extent allowed by law, with any policy adopted by the City for preference for occupancy in the Development for households who live or work in the City.

11. Rental Agreement.

a. Lease agreements for Assisted Units must comply with Section 92.253 of the HOME Regulations, as summarized below:

(1) The lease must be for a term of not less than one (1) year unless by mutual agreement between tenant and owner.

(2) Any termination of tenancy or refusal to renew a lease must be preceded by thirty (30) days written notice specifying the grounds for the action by the owner. Developer shall not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable federal, state, or local law, for completion of the transitional housing tenancy period, or for other good cause. Any termination or refusal to renew a lease by Developer's service upon the tenant of a written notice shall be in compliance with State law and specify the grounds for the action.

(3) Leases may not contain any of the following prohibitive clauses:

a. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of Developer or Developer's agent in a lawsuit brought in connection with the lease;

b. Agreement by the tenant that Developer may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. Developer may dispose of this personal property in accordance with state law;

c. Agreement by the tenant not to hold Developer or Developer's agents legally responsible for any action or failure to act, whether intentional or negligent;

d. Agreement of the tenant that Developer or Developer's agent may institute a lawsuit without notice to the tenant;

e. Agreement by the tenant that Developer or Developer's agent may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

f. Agreement by the tenant to waive any right to a trial by jury;

g. Agreement by the tenant to waive tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

h. Agreement by the tenant to pay attorneys' fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

12. Property Management of HOME-Assisted Units. Developer shall maintain the Development in compliance with all applicable housing quality standards and local code requirements for the duration of this Regulatory Agreement.
13. Occupancy Procedures. Developer shall adopt written tenant selection policies and criteria for the HOME assisted units that:
- a. Are consistent with the purpose of providing housing for Very Low-Income Households;
 - b. Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease; and
 - c. Provide for:
 - (1) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
 - (2) The prompt written notification to any rejected applicant of the grounds for any rejection.
14. Security Deposits. Any security deposits collected by Developer or Developer's agent shall be kept separate and apart from all other funds of the Development in a trust account with depository insured by the Federal Deposit Insurance Corporation, or other comparable federal deposit insurance program, and shall be held and disbursed in accordance with California law. The balance of such amount shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon.
15. Restrictions on Sale, Encumbrance, and Other Acts.
- a. Except for leases to tenants in the ordinary course of business, Developer shall not make, or allow, any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Development or of any of its interest therein, except as permitted pursuant to the Loan Agreement, the OPLA, or with the prior written approval of the City.
 - b. The City may approve a sale, transfer or conveyance provided that all of the following conditions are met:
 - (1) Developer is in compliance with this Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Regulatory Agreement;
 - (2) The successor-in-interest to Developer agrees to assume all obligations of Developer pursuant to this Regulatory Agreement and the HOME Program;
 - (3) The successor-in-interest demonstrates to the City's satisfaction that it can own and operate the Development in full compliance with all HOME Program requirements; and

(4) The terms of the sale, transfer or conveyance shall not threaten the City's security or the successor's ability to comply with all HOME Program requirements.

c. The City shall grant its approval for a sale, transfer or conveyance subject to such terms and conditions as may be necessary to ensure compliance with Program requirements.

d. Developer may only refinance the Development upon a minimum of thirty (30) days' notice to the City.

16. Violation of Regulatory Agreement by Developer. Any material breach by Developer or any of its successors of any representation, warranty or covenant hereunder, which is not cured within sixty (60) days after notice thereof given by the City, or if a cure is not possible within sixty (60) days, whose cure is not commenced within sixty (60) days and diligently prosecuted to completion, shall constitute an Event of Default.

a. If an Event of Default occurs under this Regulatory Agreement, the Loan Agreement, Deed of Trust or Promissory Note following the expiration of applicable notice and cure periods, the City may give written notice to Developer by certified mail or any express delivery service with a delivery receipt requested. If the breach or violation is not cured to the satisfaction of the City within the time period specified in the notice, which shall not be fewer than sixty (60) days, the City may declare a default and may seek legal remedies including the following:

(1) Apply to any state or federal court for an order of specific performance of this Regulatory Agreement, or for such other relief as may be appropriate. .

(2) Accelerate all amounts, including outstanding principal and interest, due under the Loan and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the City may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and State law regarding foreclosures.

(3) The City may seek such other remedies as may be available under law or equity.

b. The remedies of the City hereunder are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the City of any one or more of its other remedies.

17. Accounting Records; Reporting.

a. In a manner subject to City approval, Developer shall maintain, on an accrual or modified accrual basis, a general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Development. All records and books relating to this system shall be kept for a period of at least seven (7) years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to inspection and audit by City or City's authorized agent.

b. Commencing with the year that a temporary or permanent certificate of occupancy is issued for one or more units of the Development, Developer shall submit to the City of San Leandro (or such other entity as the City shall from time to time designate in writing), by not later than July 1st of each year, an annual report and certification in the form required by the City. For each affordable unit the report shall include at a minimum: (1) the number of persons in the unit; (2) tenant name; (3) initial occupancy date; (4) rent paid per month; (5) annual gross income of the tenant; (6) percent of rent and utility allowance per month in relation to gross income; and (7) copies of those documents used by Developer to certify or re-certify the tenant, if requested by the City.

18. Use of Income from Operations. Developer, or its management agent, shall promptly deposit all operating income in a segregated account established exclusively for the Development with an FDIC- or other comparable federally-insured financial institution.

19. Common Areas. Developer shall maintain the exterior walls, windows, lighting, walkways, mailboxes, landscaping, nonresidential space, and other common areas of the Development in safe, clean, and well maintained condition and in good working order.

20. Hazard and Liability Insurance. Developer shall at all times, including during construction, cause the Development to be insured against loss by fire, and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the City, all in accordance with the requirements of the City. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the City. Property insurance policies shall name the City as an additional insured, as approved by the City. Insurance that meets the requirements of the Loan Agreement shall be deemed to meet the requirement of this Section 20.

21. Miscellaneous.

a. Assignment of City's Rights. The City retains the right, at its sole discretion, to assign all or part of its rights under this Regulatory Agreement for the purpose of ensuring compliance and enforcement of Developer's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

b. Amendment. This Regulatory Agreement shall not be altered or amended except in writing, executed by the parties hereto.

c. Partial Invalidity. If any portion of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

d. Binding on Successors. This Regulatory Agreement shall bind, and benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in interest, and assigns, provided, however, that except for a transfer to the General Partner of the Developer or an affiliate thereof or as otherwise permitted by the Loan Agreement, the Developer may not assign this Regulatory Agreement or any of its obligations hereunder, voluntarily or by operation of law.

e. Recordation. This Regulatory Agreement, and all amendments hereto, shall be executed by each of the parties and shall be recorded against the Development in the Official Records of Alameda County at Construction Closing.

f. Hold Harmless. Absent the willful misconduct or gross negligence of the City, and following Developer's acquisition of the Property, Developer and its successors in interest agree to indemnify, defend, and hold harmless the City and its agents, employees and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorneys' fees) arising from or in connection with Developer's development, management, maintenance or operation of the Development.

g. Waiver. No waiver by the City of any breach of or default under this Regulatory Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

h. Captions. The captions used in this Regulatory Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Regulatory Agreement.

i. Governing Law. This Regulatory Agreement shall be construed in accordance with and governed by the laws of the State of California.

j. Notices. Written notices and other written communications by and between the parties hereto shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid at the addresses specified below, as such may be modified pursuant to the Loan Agreement.

Developer: Alameda Housing Associates, L.P.
345 Spear Street, Suite 700
San Francisco, CA 94105
Attention: President

City: City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Manager

k. Attorneys' Fees. The prevailing party in any action to enforce this Regulatory Agreement shall be entitled to reasonable attorneys' fees as determined by the trier of facts in that forum.

l. Counterparts. This Regulatory Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one instrument.

[SIGNATURES ON THE FOLLOWING PAGE; SIGNATURES MUST BE NOTARIZED]

IN WITNESS WHEREOF, City and Developer have executed this Regulatory Agreement as of the date first above written.

CITY

City of San Leandro, a California municipal corporation

By: _____
Chris Zapata, City Manager

Attest:

By: _____
Marian Handa, City Clerk

Approved as to form:

Richard Pio Roda, City Attorney

DEVELOPER

Alameda Housing Associates, L.P., a California limited partnership

By: Alameda Housing, LLC, a California limited liability company

Its: General Partner

By: MCB Family Housing, Inc., a California nonprofit public benefit corporation

Its: Sole Member

By: _____

Name: _____

Title: _____

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B

DEVELOPMENT DESCRIPTION AND SCHEDULE OF ASSISTED UNITS

The Assisted Units in the Development shall consist of six (6) two-bedroom and five (5) three-bedroom apartments. The apartments will range in size from 700 square feet to 1100 square feet.

Assisted Unit affordability levels shall be:

Percentage of Area Median Income

50%

Two-Bedroom 6 units

Three-Bedroom 5 units