

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