

HOME LOAN AGREEMENT

CITY OF SAN LEANDRO HOME INVESTMENT PARTNERSHIPS (“HOME”) PROGRAM

This HOME Loan Agreement (this “**Agreement**”) is made as of the ____ day of _____, 2012 by and between the City of San Leandro, a California municipal corporation (“**City**”), and Alameda Housing Associates, L.P., a California limited partnership (“**Borrower**”).

RECITALS

A. Borrower has acquired or has the right to acquire certain real property located at in San Leandro, California and identified as Alameda County Assessor’s Parcel No. 075-0039-007-05, as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”), on which Borrower will construct a two hundred (200) unit multifamily housing project (the “**Project**”) which Borrower will operate as an affordable housing development in accordance with that certain Regulatory Agreement dated as of the date hereof and executed by and between City and Borrower substantially in the form attached hereto as Exhibit A (the “**Regulatory Agreement**”). Capitalized terms not defined herein shall have the meanings ascribed to them in the Regulatory Agreement.

B. The City is a participating jurisdiction in the Alameda County HOME Consortium (“**Consortium**”) and is a recipient of funds pursuant to the HOME Investment Partnership Act, established by the National Affordable Housing Act of 1990 (42 USCA §12471 *et seq.*) (“**HOME Program**”) that are subject to certain restrictions established by the United States Department of Housing and Urban Development (“**HUD**”) under 24 CFR 92.

C. Borrower has applied to the City for, and City has agreed to provide, a loan (the “**Loan**”) to Borrower in the amount of Six Hundred Fifty Thousand Dollars (\$650,000) (the “**HOME Funds**”) in accordance with the terms and conditions of this Agreement.

D. Borrower and the City acknowledge and agree that the commitment of HOME Funds by the City shall be solely and exclusively paid from and contingent upon receipt of HOME funding by the City pursuant to that certain Agreement between the City and the County of Alameda dated September 13, 2011 (“**Consortium Agreement**”) and that certain Contract Designating the City of San Leandro as a Subrecipient of HOME Funds between the City and the County of Alameda dated _____ (“**Subrecipient Agreement**”). .

E. The Loan will be provided by the City in accordance with federal and state regulations governing the HOME Program as set forth in 42 U.S.C. 12741 *et seq.*, 24 CFR Part 92, California Health and Safety Code Section 50896, and Title 25 of the California Code of Regulations, Sections 8200 through 8220, all as amended and in effect from time to time (all of the foregoing, collectively, the (“**HOME Program Regulations**”).

F. As a condition of the Loan, the Borrower will execute and the City will cause to be recorded the Regulatory Agreement which will restrict occupancy of eleven (11) residential units in the Project to eligible households at affordable rents to households whose income is fifty percent (50%) or less of the area median income for the County of Alameda, adjusted for household size, as determined by HUD (“**Very Low-Income Households**”)

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, the Borrower and City hereby agree as follows:

ARTICLE I

LOAN TERMS

1.0 Loan. The City agrees to loan to Borrower, and the Borrower agrees to borrow from and repay to City, an amount not to exceed Six Hundred Fifty Thousand Dollars (\$650,000), subject to the terms and conditions of this Agreement. The Loan shall be evidenced by a promissory note executed by Borrower substantially in the form attached hereto as Exhibit C (the “**Note**”) bearing simple interest at the rate of three percent (3%) per annum with a term of twenty (20) years, and will be secured by a deed of trust substantially in the form attached hereto as Exhibit D (the “**Deed of Trust**”) which will be recorded against the Project prior to any disbursements hereunder.

1.1 Payment Dates; Maturity Date. Annual payments on the outstanding principal balance of the Note shall be payable on a residual receipts basis with fifty percent (50%) of all Surplus Cash (defined below) payable to City toward principal and accrued interest, subject however to Section 1.2 below. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. In no event shall any amount due under the Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of the 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 twentieth (20th) anniversary of the date upon which the City issues a final certificate of occupancy or equivalent for the Project, or (ii) the twenty-second (22nd) anniversary of the origination date of the Note.

1.2 Annual Payments From Surplus Cash. 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 generated by the Project during the previous calendar year to reduce the indebtedness owed under the Note.

No later than May 1 of each year following the issuance of a final certificate of occupancy for the Project, Borrower shall provide to City calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request, including without limitation, an independent audit prepared for the Project by a certified public accountant in accordance with generally accepted accounting principles. No later than November 1 of each year following issuance of the final certificate of occupancy for the Project,

Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash.

1.2.1 “**Surplus Cash**” shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Project. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Project, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

1.2.2 “**Gross Revenue**” shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received by Borrower from the operation and leasing of the Project. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Project shall be included within Annual Operating Expenses in the year of the expenditure); condemnation awards for a taking of part or all of the Property or the Improvements for a temporary period; and the fair market value of any goods or services provided to Borrower in consideration for the leasing or other use of any part of the Project. Gross Revenue shall include any release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Project. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances.

1.2.3 “**Annual Operating Expenses**” shall mean for each calendar year during term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on loans which have been approved by the City and which are secured by deeds of trust senior in priority to the Deed of Trust (“**Approved Senior Loans**”); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Project; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Borrower incurred in the ordinary course of business; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into an operating expense reserve in such amount necessary to maintain a balance in such reserve in the amount of _____ Dollars (\$_____); cash deposits into reserves for capital replacements in an amount no more than _____ Dollars \$____ per unit per year or such greater amount as reasonably required by the holder of an Approved Senior Loan or as required by a physical needs assessment prepared by a third-party

selected or approved by City and prepared at Borrower's expense; partnership management fees payable to the general partner of Borrower and an asset management fee payable to the investor limited partner of Borrower, each payable only during the first _____ (____) years following issuance of a final certificate of occupancy for the Project, and jointly payable in the maximum aggregate sum of _____ Dollars (\$_____) per year; any previously unpaid portion of the developer fee (without interest) (provided that the cumulative amount of such fee does not exceed the maximum allowable by the California Tax Credit Allocation Committee (the "**Approved Developer Fee**"); and other ordinary and reasonable operating expenses. Payments to Borrower, its partners or affiliates in excess of the limitations set forth in this Section shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

1.2.4 Exclusions From Annual Operating Expenses. Annual Operating Expenses shall exclude the following: developer fees and interest on any deferred developer fees (except as permitted pursuant to Section 1.2.3); contributions to Project operating reserves (except as permitted pursuant to Section 1.2.3); debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; distributions to partners; any amount paid to Borrower, any general partner of Borrower, or any entity controlled by the persons or entities in control of Borrower or any general partner of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 1.2.3 above, even if paid to Borrower, an affiliate of Borrower, or a partner of Borrower: fees paid to a property management agent, resident services agent, or social services agent; partnership management fees, developer fees, asset management fees, and subject to Section 1.2.5, repayment of cash advances by Borrower or its partners to cover Project operating expense deficits or emergency cash needs of the Project.

1.2.5 Adjustment to Operating Expenses. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include: (a) the repayment of operating deficit loans provided by Borrower's limited partner(s) provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equivalent to the lesser of (i) interest accrued at the actual interest rate charged for the loan, or (ii) interest accrued at a rate equal to three percent (3%) in excess of the rate of interest most recently announced by Bank of America, N.A. (or its successor bank) at its San Francisco office as its "prime rate", and (b) the amount of any tax credit adjustor that is required to be paid from Project cash flow.

1.3 Use of Reserves. Borrower shall fund Project operating expense and replacement reserves in the amounts set forth in Section 1.2.3. Draws from such reserves shall be used only for the purposes for which such reserves were established. Draws from replacement reserves shall be used only for capital improvements to the Project and shall be subject to City approval.

1.4 Term of Agreement. The term of this Agreement shall commence upon the date the Regulatory Agreement is recorded in the Official Records of Alameda County, and this Agreement will remain in full force and effect through and including the date which is twenty

(20) years following the date of recordation of the Regulatory Agreement, unless terminated earlier pursuant to the terms of this Agreement.

1.5 Compliance with Program Requirements. Borrower agrees that at all times its acts regarding the Project and the use of the HOME Funds shall be in conformity with all provisions of the HOME Program including the statutes, rules and regulations and such policies and procedures of HUD and the State of California pertaining to the HOME Program, including without limitation, those described in Article IV of this Agreement. Borrower acknowledges that it is familiar with such applicable provisions and has been professionally advised to the extent necessary for the purpose of enabling Borrower to fully comply with such provisions.

1.6 Use of Funds. Borrower shall use the HOME Funds only for costs eligible under the HOME Program Regulations incurred for the construction of the Project. Such costs shall only be for work approved by the City at the time of project set-up under the HOME Program or later approved in writing by the City if a modification of the scope of work is necessary. Any expenditure that is not authorized by this Agreement or that is found to be ineligible under the HOME Program Regulations, as determined by the City, shall be disallowed, and funds must be returned to the City within thirty (30) days of discovery by the City unless the City approves in writing an alternative plan to address the concern. Borrower agrees that it will not use the HOME Funds in violation of Section 4.3 below.

1.7 Performance and Payment Bonds. In accordance with the HOME Program Regulations and the Standard Agreement, the Borrower and/or the construction firm undertaking the actual general contracting duties shall provide security to assure completion of the Project by furnishing the City and any construction lenders with Performance and Payment Bonds consistent with the requirements of Section 3.21 of that certain Amended and Restated Owner Participation and Loan Agreement executed by and between Borrower and the City dated as of _____ (the "OPLA") prior to commencement of construction.

1.8 Scope of Project. Borrower agrees to complete the development of the Project in accordance with the scope of work approved by the City and described in Exhibit B attached hereto and pursuant to the Standard Agreement. The scope of work shall be completed in accordance with the time frame established in the notice to proceed that will be issued for the Project.

1.9 Regulatory Agreement. The Borrower shall execute, and pledges to operate the development in compliance with, a Regulatory Agreement substantially in the form attached as Exhibit A 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.

1.10 Disbursement of Funds. The City shall disburse HOME Funds to reimburse the Borrower for Project construction costs as provided in Section 1.6 subject to satisfaction of the conditions set forth in this Section 1.10 and in Section 1.10.1. Not more than once per month, Borrower shall submit to the City a written requisition for payment accompanied by invoices, evidence of completion, and such additional documentation as City may reasonably require. The

City shall disburse HOME Funds to Borrower only to the extent that: (a) HOME Funds are made available to the City; and (b) the uses of the HOME Funds are eligible in accordance with the HOME Program Regulations. If for any reason the HOME Funds are not made available to the City, or any of the Borrower's uses of HOME Funds are determined to be ineligible uses under the HOME Program Regulations, then the City shall not have an obligation to disburse the HOME Funds requested by Borrower. The aggregate amount of HOME Funds disbursed to Borrower pursuant to this Agreement shall not exceed the amount of the Loan.

1.10.1 Conditions to Disbursement. City shall disburse HOME Funds in accordance with Section 1.10 only following satisfaction of all of the following conditions:

- (i) The conveyance of the Property to Borrower.
- (ii) Borrower's execution and delivery to City of this Agreement, the Note, the Deed of Trust, and the Regulatory Agreement.
- (iii) Recordation of the Deed of Trust and the Regulatory Agreement in the Official Records of Alameda County.
- (iv) Borrower's delivery to City of evidence reasonably satisfactory to City that there are no mechanics' liens or stop notices related to the Property or the Project, and Borrower's provision to City of full waivers or releases of lien claims if required by City.
- (v) The issuance by an insurer satisfactory to City of an A.L.T.A. lender's policy of title insurance ("**Title Policy**") for the benefit of City in the amount of the Loan, insuring that the lien of the Deed of Trust and the Regulatory Agreement are subject only to such exceptions to title as City shall reasonably approve and containing such endorsements as City may reasonably require.
- (vi) Borrower's delivery to the City of evidence of property and liability insurance coverage and payment and performance bonds in accordance with the requirements set forth herein and in the Regulatory Agreement.
- (vii) Borrower's delivery to City of certified copies of Borrower's LP-1 and partnership agreement, and certified copies of the formation documents for each of Borrower's general partners, documentation of the managing general partner's tax-exempt status, and resolutions authorizing Borrower's execution of and performance under this Agreement, the Note, the Deed of Trust and the Regulatory Agreement.
- (viii) No material adverse change as determined by City in its reasonable judgment shall have occurred in the condition of the Property or in the financial or other condition of Borrower since the date of this Agreement.
- (ix) Borrower's delivery to City of evidence reasonably satisfactory to City that Borrower has obtained all necessary entitlements, permits (including without limitation building permits), licenses, and approvals required to develop the Project, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve;

(x) City shall have approved the final plans and specifications for the Project;

(xi) Borrower's construction financing for the Project shall have closed or shall close concurrently with City's disbursement of funds for construction, and Borrower shall have delivered to City evidence reasonably satisfactory to City that Borrower has secured binding commitments, subject only to commercially reasonable conditions, for all Project construction and permanent financing; and

(xii) Borrower's delivery to City, and City approval of the Project construction contract, budget, and construction schedule.

1.10.2 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

(i) the failure of any of Borrower's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects;

(ii) the termination of this Agreement by mutual agreement of the Parties;

(iii) the occurrence of an Event of Default under this Agreement, the Regulatory Agreement, the Note or the Deed of Trust that remains uncured beyond any applicable cure period, or the existence of any condition, event or act which upon the giving of notice or the passage of time or both would constitute an Event of Default under any such document.

1.11 Subordination. The City agrees to subordinate the Deed of Trust and the Regulatory Agreement to deeds of trust recorded for the benefit of Project construction and permanent lenders provided that such lenders agree to include in their subordination agreement and deeds of trust conditions substantially similar to the following conditions: (i) City shall receive any notices of default issued by such lender to Borrower; (ii) City shall have the right to cure any default by Borrower within sixty (60) days after a notice of default; (iii) City shall have the right to enforce this Agreement without the lender accelerating its debt, provided the City has cured or is attempting to cure any defaults under lender's deed of trust; and (iv) City shall have the right to review and approve the loan documents for any financing secured by the Project, which approval shall not be unreasonably withheld. To implement any such subordination, the City agrees to cooperate with Borrower and execute such subordination agreements that may be reasonably required, in form and content approved by the City Attorney..

ARTICLE II GENERAL REQUIREMENTS

2.1 Rental Agreement; Security Deposits. Leases and rental agreements used for HOME-assisted units must comply with Section 92.253 of the federal HOME Regulations, as summarized in Section 11 of the Regulatory Agreement. Borrower shall comply with the requirements pertaining to security deposits as set forth in Section 14 of the Regulatory Agreement.

2.2 Property Management of HOME-Assisted Units. Borrower shall maintain the Project in compliance with all applicable housing quality standards and City code requirements for the duration of the Regulatory Agreement.

2.3 Occupancy Procedures. Borrower shall adopt written tenant selection policies and criteria in accordance with the requirements set forth in Section 13 of the Regulatory Agreement.

2.4 Hazard and Liability Insurance. Borrower shall at all times cause the Project to be insured against loss by fire, flood (as required pursuant to 24 CFR 92.358), and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the City. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the City. Liability policies shall name the City and its officers, officials, employees, and agents as additional insured. Property insurance policies shall name the City as loss payee. In addition to the foregoing, Borrower shall comply with all insurance requirements set forth in the OPLA.

2.5 Hold Harmless. Borrower and its successors in interest agree to indemnify, defend, and hold harmless the City and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorneys' fees) arising from or in connection with Borrower's development, management, maintenance or operation of the Project; provided, however, the Borrower's obligations to indemnify and hold harmless shall not apply in the event and to the extent of any indemnitee's gross negligence or willful misconduct.

2.6 Annual Report. Borrower shall file with the City an annual report, as required by 24 CFR 92 no later than one hundred twenty (120) days following the end of each calendar year. The report shall contain a certification by Borrower as to such information as the City may then require including, but not limited to, the following:

(1) The substantial physical defects in the Project, including a description of any major repair or maintenance work undertaken or needed in the previous and current fiscal years. Such statement shall describe what steps Borrower has taken in order to maintain the Project in a safe and sanitary condition in accordance with applicable housing and building codes.

(2) The occupancy of the Project including with respect to the eleven (11) HOME-assisted units:

(A) the verified income of each current household; and

(B) the current rent charged each household and whether these rents include utilities.

(3) A summary of the information received from the recertification of tenants' incomes.

(4) Other information as required pursuant to the Regulatory Agreement or reasonably required by the City or HUD.

2.7 City Review and Inspections.

(1) Upon not less than forty-eight (48) hours' notice to Borrower, the City may at any time during the term of this Agreement, enter and inspect the physical premises and inspect all accounting records pertaining to the development or operation of the Project. Upon request by the City, Borrower shall notify occupants of upcoming inspections of their units in accordance with State law.

(2) The City may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Such information shall be promptly provided by Borrower.

2.8 Restrictions on Sale, Encumbrance, and Other Acts.

(1) Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Project or of any of its interest therein without prior written approval of the City, which shall not be unreasonably withheld.

(2) Borrower shall not permit the use of the Project for any purpose other than that permitted by this Agreement without the prior written approval of the City.

(3) The City may approve a sale, transfer or conveyance provided that all of the following conditions are met:

(A) Borrower is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of this Agreement;

(B) the successor-in-interest to Borrower agrees to assume all obligations of the existing Borrower pursuant to this Agreement and the HOME Program;

(C) the successor-in-interest demonstrates to the City's satisfaction that it can own and operate the Project in full compliance with all HOME Program requirements; and

(D) any 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.

(4) The City may grant any approval for a sale, transfer or conveyance subject only to such terms and conditions as may be necessary to ensure compliance with HOME Program requirements.

2.9 Assignment of City Rights. The City retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of Borrower'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.

2.10 Fees. Borrower shall be responsible for payment of all customary and fees and charges in connection with the processing of City, and all other applicable permits and approvals for the Project.

2.11 Taxes and Assessments. Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property or the Project and payable by Borrower, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Borrower exercises its right to contest any tax, assessment, or charge, the Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

2.12 Liens and Stop Notices. Until the expiration of the term of the Regulatory Agreement, Borrower shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Borrower. If a claim of a lien or stop notice is given or recorded affecting the Project or the Property, Borrower shall within twenty (20) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

2.13 Construction Pursuant to Plans; Compliance with Laws; Prevailing Wages.

(a) Borrower shall construct the Project in conformance with the plans and specifications approved by the City.

(b) Borrower shall cause all work performed in connection with the Project to be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, regional and local agencies now in force or that may be enacted hereafter, including without limitation and to the extent applicable, the prevailing wage provisions of the federal Davis-Bacon Act (40 USC 3141-3148) and implementing rules and regulations (collectively “**Davis-Bacon**”), and state prevailing wages pursuant to Labor Code Section 1770 *et seq.*, and the regulations adopted pursuant thereto (“**State Prevailing Wage Laws**”).

(c) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City Agency against any claim for damages, compensation, fines, penalties or other amounts (including attorney’s fees) arising out of the failure or alleged failure of any person or entity (including the Borrower, its contractor and subcontractors) to comply with all applicable laws in connection with the construction and/or operation of the Project, including without limitation, any failure to pay prevailing wages as determined pursuant to the prevailing wage provisions of the Davis-Bacon Act and State Prevailing Wage Laws in connection with the construction of the Project or any other work undertaken or in connection with the Property. The requirements in this Subsection shall survive repayment of the Loan and the reconveyance of the Deed of Trust.

2.14 Hazardous Materials.

(a) Borrower's Obligations. Borrower hereby covenants and agrees that:

(1) Borrower shall not knowingly permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material (as defined in Section 2.14(c)(i) of this Agreement) or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential properties similar in nature to the Property and any commercial uses developed as part of the Project, and used, stored and disposed of in compliance with Environmental Laws (as defined in Section 2.14(c)(ii) of this Agreement). .

(2) Borrower shall keep and maintain the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.

(3) Upon receiving actual knowledge of the same, Borrower shall immediately advise City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Borrower, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Borrower or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property; or (iv) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims**"). The City 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 Claim.

(4) Without the City's prior written consent, which shall not be unreasonably withheld or delayed, Borrower shall not take any remedial action in response to the presence of any Hazardous Material in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim.

(b) Environmental Indemnity. To the greatest extent allowed by law, Borrower shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any

Hazardous Material on, under, in or about the Property, or the transportation of any such Hazardous Material to or from, the Property, or (ii) the failure of Borrower, Borrower's employees, agents, contractors, subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws, unless caused by the City's active or passive negligence. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Material, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws.

(c) Definitions.

(i) **“Hazardous Material”** means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous material” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

(ii) **“Environmental Laws”** means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

ARTICLE III DEFAULTS AND REMEDIES

3.1 Event of Default. An Event of Default shall arise hereunder upon: (i) Borrower's material breach of any representation, warranty, covenant or obligation under this Agreement, the Note, the Deed of Trust or the Regulatory Agreement which is not cured within thirty (30) days after notice thereof given by the City to Borrower and Borrower's limited partners, or in the case of a default for which a cure is not possible within thirty (30) days, for which a cure is not commenced within thirty (30) days and diligently prosecuted to completion; (ii) an Event of Borrower Default shall have arisen under the OPLA and shall have remained uncured beyond the expiration of all applicable cure periods; or (iii) an event of default on the part of Borrower shall have arisen under any other document evidencing or securing financing for the Project or imposing occupancy, rent or other restrictions on the Project, and shall have remained uncured beyond the expiration of all applicable cure periods. Notwithstanding anything to the contrary contained herein, the City hereby agrees that any cure of any default made or tendered by one or more of Borrower's partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

3.2 City's Remedies. Upon the occurrence of an Event of Default, the City may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note, pursuing foreclosure under the Deed of Trust, or applying to any state or federal court for an order of specific performance of this Agreement and the Regulatory Agreement.

3.3 Remedies Cumulative; Inaction Not a Waiver. The exercise by City of one or more remedy shall not preclude the exercise by it, at the same or different time, of any other remedy for the same or any other default hereunder. No failure or delay by City in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive City of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

ARTICLE IV HOME PROGRAM REQUIREMENTS

4.1 HOME Laws & Regulations. Borrower shall comply with all applicable HOME Program Regulations and any applicable successor state or federal laws or regulations, all as amended and in effect from time to time, including (but not limited to) the requirements set forth in this Agreement and/or the Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the HOME Program and the use of the Loan proceeds, the applicable HOME Program laws and regulations shall govern. The Borrower agrees to enter into any modification of this Agreement and/or the Regulatory Agreement reasonably required by the City to attain compliance with the requirements of the HOME Program. Borrower acknowledges and agrees that it has reviewed the HOME Program Regulations in effect as of the date of execution of this Agreement.

4.2 Specific Requirements. The laws and regulations governing the HOME Program and the use of the HOME Loan include (but are not limited to) the following:

(1) Environment and Historic Preservation. Section 104(f) of the Housing and Community Residence Act of 1974 and 24 CFR Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 CFR. 58.5. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended and the procedures set forth in 36 CFR Part 800.

(2) Applicable OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102 (Revised), A-110, A-122, and A-128.

(3) Lead-Based Paint. The requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 *et seq.*), the residential Lead- Based Paint Hazard Reduction Act (42 U.S.C. 4851 *et seq.*) and implementing regulations at 24 CFR Part 35.

(4) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and implementing regulations at 49 CFR Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 CFR 92.353; and California Government Code Section 7260 *et seq.*, and implementing regulations at 25 California Code of Regulations Sections 6000 *et seq.*. If and to the extent that acquisition and rehabilitation of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then the Borrower shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. The Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

(5) Civil Rights, Housing and Community Development and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 CFR Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706 *et seq.*), and federal regulations issued pursuant thereto (24 CFR Part 8); the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*); Executive Order 11063 as amended by executive Order 12259 and implementing regulations at 24 CFR Part 107; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (Equal Employment Opportunity) and implementing regulations issued at 41 CFR Chapter 60 and Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended and implementing regulations at 24 CFR part 135 as they relate to equal employment opportunities; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432 (concerning minority business enterprise) and Executive Order 12138 as amended by Executive Order 12608 (concerning women's business enterprise) to encourage the use of women and minority owned businesses to the maximum extent possible.

(6) Nondiscrimination Against the Disabled. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706 *et seq.*), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program. Architectural Barriers. The requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and /or Title III of the Americans with Disabilities Act of 1990 (42 USC 12131 *et seq.*) and federal regulations issued pursuant thereto.

(7) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1978, as amended, 12 U.S.C. 1701, requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Borrower agrees to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project.”

(8) Drug Free Workplace. Drug Free Workplace Act of 1988,(P.L. 100-690) and implementing regulations at 24 CFR Part 87.

(9) HUD Regulations. Any other Department of Housing and Urban Development regulations currently in effect or as may be amended or added in the future pertaining to the HOME Program.

(10) Debarred, Suspended or Ineligible Contractors. Use of debarred, suspended, or ineligible contractors or subrecipients is prohibited directly or indirectly as part of this award as set forth in 24 CFR part 5.

(11) Conflict of Interest. No member, officer or employee of the organization, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the loan, and Borrower shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of the certification.

(12) Davis Bacon. All contracts for new construction or rehabilitation projects with twelve (12) or more HOME-assisted units shall comply with HUD requirements and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 1, 3, and 5 governing the payment of wages and the ratio of apprentices and trainees to journeypersons.

4.3 Limitation on Use of Funds. Borrower agrees that it will not use funds loaned pursuant to this Agreement, either directly or indirectly, as a contribution in order to obtain any federal funds under any federal programs without prior written approval of the City.

4.4 Certification Regarding Lobbying. The undersigned certifies, to the best of his or her knowledge and belief, that:

(A) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(B) If any funds other than federally appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL. "Disclosure form to Report Lobbying" in accordance with its instructions.

ARTICLE V MISCELLANEOUS PROVISIONS

5.1 Conflict of Interest. No employee, agent, consultant, officer, or elected or appointed official or member of the governing body of the City and no other public official of the City who exercises any functions or responsibilities with respect to the Project or the HOME Program has or may obtain a direct or indirect personal or financial interest in, or benefit from, the Borrower or the Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Project either for themselves or for those with whom they have family or business ties, during their tenure or at any time during one (1) year thereafter, and Borrower shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of the certification.

5.2 Equal Opportunity. During the construction of the Project there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

5.3 Nondiscrimination. Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project 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. Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

5.4 Amendment. This Agreement may be amended only by a writing signed by authorized representatives of the City and Borrower; the City Manager or his or her designee shall be authorized to act on behalf of the City.

5.5 Notices. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

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

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

5.6 No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

5.7 Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

5.8 Titles and Headings. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

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

5.10 Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

5.11 Signs. During the construction period, Borrower shall place signs on the property stating the HOME Program is providing financing in conformance with the City's sign ordinance.

5.12 Entire Agreement. This Agreement, together with Exhibits A through D 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.

5.13 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies hereunder.

5.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the parties as partners, co-venturers, or principal and agent with one another.

5.15 Counterparts. This 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 FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement as of the date first set forth above.

CITY

City of San Leandro, a California municipal corporation

By: _____

Chris Zapata, City Manager

Attest:

By: _____

Marian Handa, City Clerk

Approved as to form:

Jayne Williams, City Attorney

BORROWER

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

By: BRIDGE Norcal, 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

FORM OF REGULATORY AGREEMENT

(Attach form of HOME Regulatory Agreement.)

EXHIBIT B

SCOPE OF WORK

The Project shall consist of a total of two hundred (200) unit multifamily rental housing project, of which eleven (11) units shall be HOME-assisted units, together with [other amenities]. There will be a minimum of _____ (____) on-site parking spaces. The apartment units will range in size from approximately _____ square feet to _____ square feet.

EXHIBIT C

FORM OF NOTE

(Attach form of HOME Promissory Note.)

EXHIBIT D

FORM OF DEED OF TRUST

(Attach form of HOME Deed of Trust.)