TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT

DATE: AUGUST 4, 2008

CMR: 312:08

SUBJECT: APPROVAL OF A LOAN AGREEMENT AND A REGULATORY AGREEMENT WITH FABIAN WAY ASSOCIATES, L. P. TO PROVIDE A DEVELOPMENT LOAN OF RESIDENTIAL HOUSING FUNDS IN THE AMOUNT OF $600,000 FOR A VERY LOW INCOME 56-UNIT SENIOR RENTAL HOUSING PROJECT AT 3895 FABIAN WAY

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the attached Loan Agreement for Fabian Way Senior Housing (Loan Agreement), with its attached form of promissory note and deed of trust, which authorizes a residual receipts loan of $600,000 for development costs; and

2. Approve the attached Regulatory Agreement and Declaration of Restrictive Covenants for Fabian Way Senior Housing (Regulatory Agreement) regulating the use and occupancy of the Fabian Way senior housing project; and

3. Authorize the City Manager or designee to execute the Loan Agreement and the Regulatory Agreement in substantially identical form; and

4. Authorize the City Manager or designee to execute all other documents required to implement the Agreements, including escrow instructions and to approve all necessary subordination agreements and direct the City Manager or designee to administer the provisions of the Agreements.

BACKGROUND

The planning entitlements for the Fabian Way senior affordable rental housing project were approved by the City as part of the private redevelopment of the 12 acres known as 901 San Antonio
Road. The other projects, which are currently under construction, are: the adjoining 103-unit “Altaire” for-sale townhouses and the Campus for Jewish Life, which includes the 193-unit 899 East Charleston Road senior congregate care project.

BRIDGE Housing Corporation, an experienced non-profit developer and manager of affordable housing with numerous projects throughout the Bay Area, is the sponsor and developer for the Fabian Way rental housing, which will provide 56-units of very low-income, rental apartments for seniors, including 20 units for extremely low-income, frail elderly with supportive services. Except for the resident manager’s unit, all of the apartments will be one-bedroom units with parking provided under easement agreements in the adjoining townhouse project’s garage. On June 2, Council adopted a resolution (CMR: 260:08) authorizing the issuance of tax-exempt bonds by the California Municipal Finance Authority (CMFA), which will be used to fund a construction period loan. BRIDGE expects to begin construction this fall or later in the year and to achieve full occupancy by the summer of 2010.

DISCUSSION
In order to meet housing needs for seniors with extremely low incomes, BRIDGE needed to secure deferred loans and equity funds for the entire estimated $22.3 million in project development costs. BRIDGE applied in two different rounds for HUD 202 funding, but was unsuccessful as the 202 program is extremely competitive. Last August, BRIDGE applied for the State’s Multifamily Housing Program (MHP) funding and received a commitment of $5.25 million in January. Other major sources of funding which have been committed include: a projected $5.8 million in equity from the sale of low income housing tax credits to a limited partner; a $1.5 million deferred loan from the County of Santa Clara County’s Office of Affordable Housing; and construction period funding from the Sobrato Fund, the Housing Trust of Santa Clara County and the CMFA bond loan mentioned above.

The largest single source of funds for this project is the $7.3 million in equity being contributed by BUILD, the developer of the adjoining 103-unit townhome project. This payment was negotiated in-lieu of the provision of the normally required 15 percent Below Market Rate (BMR) program units. BUILD and BRIDGE proposed this alternative approach to satisfying the BMR Program requirement and the BMR agreement was approved by Council on September 26, 2006 at the time the planning entitlements were approved. Because BUILD’s BMR in-lieu payment had to be set prior to its project approval, the City required preparation of an independent economic analysis to determine the payment amount that would be equivalent to the provision of 16 for-sale BMR units within the development. The economic analysis determined that $7.3 million was the equivalent of 16 for-sale BMR units in the BUILD project.

BRIDGE also requested a $600,000 development loan from the City to offset a portion of the costs of the remaining forty units so that the entire project could serve very low-income seniors. These funds were budgeted as part of the 2008-09 Council-adopted budget. The City loan will accrue interest up to a maximum of three percent simple interest annually based on the amount of surplus cash flow from the project’s operations. The State’s MHP regulations specify how any cash flow is apportioned among the permanent lenders; therefore, other than rather minimal payments of interest, regular repayment of the City loan is not anticipated, which is standard practice in local financing of
this type of deeply affordable rental housing. In addition, tax credit program rules limit the accrual of substantial amounts of unpaid interest over time. As a result, the City loan terms specify that interest will be paid each year up to the maximum three percent simple interest rate, to the extent that there is sufficient cash flow; however, to the extent any year’s cash flow is insufficient to pay three percent interest, the unpaid interest will effectively be forgiven and, thus, will not increase the total amount due on the City loan. The total unpaid principal and interest on the City loan is due concurrently with the 55-year term of the MHP loan.

Once the project is fully operational, the use and occupancy of the apartments will be controlled by multiple regulatory agreements from the various funding sources, with the most restrictive being the MHP program’s 55-year regulatory agreement and the City Regulatory Agreement. The City’s Regulatory Agreement will be recorded with the Deed of Trust securing the City’s Promissory Note as soon as possible after Council approval. As the other funding entities provide their financing to the project, the City will need to subordinate its loans and Regulatory Agreement to the loans and regulatory agreements of those entities. Staff is requesting that the City Manager or designee be authorized by Council to review and approve each of these subordination agreements in consultation with the City Attorneys office, at the appropriate time in order to avoid any delay in the progress of construction or the closing of the permanent funding after completion.

Rents and Occupancy of the Apartments: In order to succeed in the competition for the State’s MHP funding, BRIDGE needed to emphasize housing for extremely low-income, senior households and to serve a substantial number of seniors with special needs. The rent categories and income limits with current 2008 rents are shown below; actual rents may change somewhat by the time the project is constructed and ready for occupancy due to changes in the County median income.

<table>
<thead>
<tr>
<th>Occupancy Category &amp; Rent Formula</th>
<th>Number of Units</th>
<th>2008 Gross Rents One-Bedrooms</th>
<th>2008 1-Person Income Limits</th>
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</thead>
<tbody>
<tr>
<td>Extremely Low Income 25% of AMI</td>
<td>20 units³</td>
<td>$497</td>
<td>$18,575</td>
</tr>
<tr>
<td>Extremely Low Income 30% of AMI</td>
<td>11 units</td>
<td>$597</td>
<td>$22,290</td>
</tr>
<tr>
<td>Very Low Income 40% of AMI</td>
<td>24 units</td>
<td>$796</td>
<td>$29,720</td>
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<tr>
<td>Total Restricted Units</td>
<td>55</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Units</td>
<td>56</td>
<td></td>
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</tbody>
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Notes:
1) AMI means the Area Median Income for Santa Clara County, which equals $105,500 for a household of four persons as published on March 25, 2008. Initial rents and income limits are as published by State HCD for 2008.
2) The income limits shown assume a one-person household in a one-bedroom unit.
3) Supportive Housing (SH) Units must be set aside for households that are extremely low income (not over 25% of AMI) and eligible for the Multipurpose Senior Services Program (MSSP). MSSP eligible seniors are frail elderly, 65 years or older, and currently eligible for Medi-Cal. Supportive services must be provided to these residents.

RESOURCE IMPACT
The funds for the City’s $600,000 loan are budgeted in the Residential Housing Fund in the FY 2008-09 City Budget approved by Council on June 9, 2008. No General Fund monies are being used for this housing project.

The financing package assembled by BRIDGE for development of the apartments is described below (figures are rounded, and some figures are still estimates).

Permanent Sources of Funds for Development:
- State Housing & Community Development – MHP Loan $5,250,000
- Investor equity 4% - Low Income Housing Tax Credits (estimated) $5,801,000
- General Partner Equity (Including the $7.3 million BUILD contribution) $7,500,000
- Santa Clara County Office of Affordable Housing $1,500,000
  (May seek additional funds from County if available, depending on the outcome of the state tax credit application)
- State of California Low Income Housing Tax Credits (estimated; application submitted on July 24, 2008) $1,500,000
- City of Palo Alto: Residential Fund Loan $600,000
- BRIDGE: Deferred Developer Fee $349,000

Total Project Funding $22,500,000
Total Funding per Unit (56 units): $401,786

POLICY IMPLICATIONS
The actions recommended in this report implement adopted City Housing Element policies and programs supporting the development of very low and low income housing. These 56-units will be counted towards the City’s housing production goals for the 2007 to 2014 Housing Element period.

ENVIRONMENTAL REVIEW
Council approval of this loan and the related financing and regulatory documents is not subject to the California Environmental Quality Act. The development of the BRIDGE senior housing was evaluated in a Final Environmental Impact Report (FEIR) certified by the City Council on September 26, 2006; the FEIR covered all of the 901 San Antonio Road projects.

ATTACHMENTS
A. Loan Agreement for Fabian Way Senior Housing (Loan Agreement), with its attached form of promissory note and deed of trust
B. Regulatory Agreement and Declaration of Restrictive Covenants for Fabian Way Senior Housing