**Do not include this cover page in the use of this Note.**

**Affordable Housing Program – Rental Projects**

**Promissory Note**

This form document has been prepared to address the minimum retention requirements of the AHP Regulations. The Federal Home Loan Bank of San Francisco makes no representation or warranty that a court will enforce these form documents in accordance with applicable state law. We strongly recommend that each member have its legal counsel review the documents to address any state law requirements, including but not limited to consumer credit laws, notary requirements, usury laws, recording procedures and requirements, and requirements for mortgage states. The final note and rider to the deed of trust must meet the requirements of your jurisdiction.

**Notes to Sections**

Section 3: Repayment
The text in Section 3 may raise tax issues in projects utilizing low-income housing tax credits. Parties should consult their tax advisers concerning appropriate revisions to address such issues. The Bank will not object to modifications or deletions intended to preserve the benefit of low-income housing tax credits so long as the Income and Affordability Restrictions remain in place for the Retention Period and repayment is required under the circumstances prescribed in the AHP regulations, which are generally those circumstances set forth in Sections 5 and 6.

Delete Section 3 if not applicable and state "This section left intentionally blank".

Section 7: Cure Rights
The Bank understands that notice and cure rights of the kind described in this section may be requested for tax credit projects, but they are not required by AHP Regulations and the Bank has no objection to modification or deletion of this section.

Delete Section 7 if not applicable and state "This section left intentionally blank".

Section 14: Governing Laws
Delete the following text in this section if not applicable: [FOR FEDERALLY CHARTERED INSTITUTIONS: or to the extent such law restricts activities otherwise permitted to federally chartered savings banks in which event the laws, rules and regulations of the United States shall govern].

**PROMISSORY NOTE**

(AHP Rental Project)

|  |  |
| --- | --- |
| $  | , **20**, **[state]**  |

FOR VALUE RECEIVED, [borrower], a [form of entity] ("Borrower"), promises to pay to [lender], a [form of entity] or its successor as holder of this Note ("Lender"), or order, the principal sum of  Dollars ($), or so much thereof as may be advanced hereunder as provided below. The funds disbursed by Lender to Borrower under this Promissory Note (“Note”) were advanced to Lender by the Bank pursuant to the Regulations governing the AHP.

1. **Definitions**. As used in this Note, the following capitalized terms have the following meanings:

“**AHP**” means the Federal Home Loan Bank Affordable Housing Program.

"**AHP Application**" means the AHP application submitted to the Bank for Project No.      , Project Name:      .

“**AHP Policies and Procedures**” means the Bank’s policies, procedures, guidelines and instructions covering, among other things, feasibility, disbursement, monitoring and modifying affordable housing projects participating in the AHP, all as amended from time to time.

“**AHP Regulations**” means the regulations set forth at 12 C.F.R. Part 1291, as amended from time to time, of the FHFA governing the AHP.

“**Borrower**” is the maker of this Note and, the owner of the Project.

“**Deed of Trust**” means the deed of trust, mortgage or similar instrument dated on or about the date of this Note, in favor of Lender, securing this Note and encumbering the Project.

“**FHFA**” means the Federal Housing Finance Agency.

“**Bank**” means the Federal Home Loan Bank of San Francisco.

“**Implementation Plan**” means the Affordable Housing Program Implementation Plan established by the Bank, as amended from time to time.

“**Income-Eligibility and Affordability Restrictions**” means income limitations as amended or modified or adjusted annually according to the current applicable median income data from time to time with the approval of the Bank and rent limitations such that the Project units are affordable for households with incomes at or below the levels committed to be served in the AHP Application.

“**Loan**” means the advance of funds evidenced by this Note.

"**Loan Documents**" means this Note, the Subsidy Agreement, the Deed of Trust, and all other documents relating to or securing this Note (as renewed, amended, modified, restated and extended from time to time).

“**Maturity Date**” means the later of the end of the Retention Period or the following date:      .

“**Project**” means the real property identified in the AHP Application and the improvements and tangible and intangible personal property associated or connected therewith, all of which is encumbered by the Deed of Trust.

“**Retention Period**” means the period commencing on the date of completion of the Project as determined by the Bank in its discretion and ending fifteen (15) years after the same date.

“**Project Sponsor**” means an organization or public entity that has ownership interest in the Project (including any leasehold, partnership or control of a nonprofit affiliate that has a direct ownership interest in the Project), and is a party to the Subsidy Agreement. A Project Sponsor may be the Borrower.

“**Subsidy Agreement**” means the Affordable Housing Program Direct Subsidy Agreement Rental Project, executed by and among the Project Sponsor, Lender and Bank.

1. **Interest**. The indebtedness evidenced by this Note shall not bear any interest except as provided below.
2. **Repayment.** The Loan will not amortize. Except as provided below, payment of the principal balance of and any accrued interest under this Note will be due and payable in full on the Maturity Date; provided, however, that no payment shall be required under this Section 3 on the Maturity Date if no default or breach has occurred and is continuing under this Note, the Deed of Trust, the Subsidy Agreement, the other Loan Documents, the AHP Application, the AHP Regulations or the AHP Policies and Procedures as of the end of the Retention Period, or on such earlier date as provided in the Rider to the Deed of Trust or the terms and conditions of the Subsidy Agreement.
3. **Optional Prepayment**. Borrower shall have the right to prepay all or a portion of the principal due under this Note without any charge or penalty being made therefor.
4. **Acceleration**. Subject to the nonrecourse provisions in the section below entitled “Security; Nonrecourse Provision and Exceptions,” the Loan (or any portion of the Loan determined by Lender) plus interest in an amount determined by the Bank, will become immediately due and payable in full, at the option of Lender, if:
	1. any portion of the Loan proceeds was not used in compliance with:
		1. the commitments made in the AHP Application, or
		2. the requirements of the AHP Regulations, or
		3. the AHP Policies and Procedures or the Implementation Plan; or
		4. the Subsidy Agreement; or
	2. Borrower or Project Sponsor fails to perform or keep any obligation or agreement of Borrower or Project Sponsor provided in the AHP Application, the AHP Regulations, the AHP Policies and Procedures, the Implementation Plan, Subsidy Agreement, the Loan Documents or any certification, report or other agreement now or hereafter provided by Borrower or the Project Sponsor to Lender or the Bank in connection with the AHP Application or the Loan; or
	3. any representations and warranties made by Borrower or Project Sponsor to Lender or the Bank are untrue in any material respect.

Lender’s right to accelerate payment of this Note on account of the above provisions is subject to the notice and cure provisions, if any, set forth below. If any of the events enumerated in the preceding subparagraphs occurs and if Lender consents to the same or fails to exercise its right to declare all sums secured hereby due and payable, such consent or failure shall not be deemed or construed as a waiver, and the express consent of Lender shall be required on all successive occurrences.

1. **Other Repayment Events**. Subject to the nonrecourse provisions of the section below entitled “Security; Nonrecourse Provision and Exceptions,” the Loan will become immediately due and payable in full, at the option of Lender, in the following cases:
	1. if, during the Retention Period, the Project is sold, transferred, assigned, or refinanced and the Project ceases to be subject to a deed restriction, retention agreement or similar instrument imposing the Income-Eligibility and Affordability Restrictions on the Project; and,
	2. if during the Retention Period, the Project Sponsor or Borrower sells, assigns, or transfers ownership in the real property associated with the Project to any entity other than as specified in the representations made by the Member and Project Sponsor in the approved AHP Application.
	3. to the extent provided in Section 15 of the Subsidy Agreement entitled “Repayment and Recovery Provisions” and any successor section or provision, which provides for liability of Project Sponsor to Lender for amounts, including interest, that Lender is required to repay to the Bank if as a result of the actions or omissions of the Project Sponsor or the Borrower the Project is not used in compliance with the terms of the AHP Application or the AHP Regulations.
2. **Cure Rights.** Notwithstanding anything to the contrary in the Note or Deed of Trust:

(a) Borrower shall have the right to cure, or cause the Project Sponsor to cure, any defaults and Lender agrees to accept cures tendered by Borrower or Project Sponsor within thirty (30) days of written notice to Borrower or Project Sponsor of such default, plus such additional time as is reasonably necessary to cure the default provided Borrower has commenced the cure within such thirty (30) day period and is diligently prosecuting the cure.

(b) if a default is eliminated by an approved modification of the AHP Application consistent with Paragraph 11 of the Subsidy Agreement (or any successor provision) and the AHP Regulations, the default shall be deemed cured.

(c) Lender shall give the Project Sponsor and Borrower’s tax credit investor, if any (“Investor”), the same written notice of default given to the Borrower as required herein; provided, that Lender’s failure to give separate written notice to Project Sponsor or Investor shall not impair or invalidate any notice of default given to Borrower or give rise to any liability on the part of Lender to Project Sponsor or Investor or any other third party. Investor shall have the right to cure defaults within the time periods provided to Borrower herein, and performance of a cure by Investor or an affiliate of Investor shall have the same effect as would like performance by Borrower. Investor's address for notice purposes is:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

or such other address provided Lender by Investor from time to time.

1. **No Offset**. Borrower hereby waives any rights of offset it now has or may hereafter have against Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.
2. **Expenses of the Bank**. Borrower hereby agrees that if Borrower or Project Sponsor brings any action or proceeding against the Bank seeking to obtain any legal or equitable relief under or arising out of this Note, the Subsidy Agreement between Lender and the Bank pertaining to the Note, the subsidy represented by the Note or any transaction contemplated in connection therewith, and such relief is not granted by a final decision, after any and all appeals of court of competent jurisdiction, Borrower will pay the attorneys' fees and other costs incurred by the Bank in connection therewith. The Bank shall be a third party beneficiary of the terms and provisions of this paragraph and shall be entitled to take any and all remedies available under applicable law to enforce this provision against Borrower.
3. **Waiver**, **Attorneys' Fees**. Borrower waives diligence, presentment, protest, and demand, and notice of protest, dishonor and non-payment of this Note, and waives the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same. If an action is instituted on this Note, the undersigned promises to pay, in addition to the costs and disbursements allowed by law, such sum as a court may adjudge reasonable as attorneys' fees in such action.
4. **Security**; **Nonrecourse Provision and Exceptions**.
	1. This Note is secured by the Deed of Trust. The Deed of Trust contains certain additional provisions for acceleration of the maturity of the Note.
	2. Subject to the exceptions set forth below, repayment of amounts due under this Note shall be nonrecourse to Borrower and its partners, and Lender shall look solely to the security described in the Deed of Trust and any other security agreement for repayment in the event of default hereunder. The foregoing provision shall not relieve Project Sponsor or Borrower and, if Borrower is a partnership, any general partner of Borrower of liability, subject to applicable antideficiency laws, for:
		1. repayment of amounts due under this Note in case of misuse of Loan proceeds as described in Section 5 or as otherwise repayable in accordance with Section 15 of the Subsidy Agreement;
		2. repayment of amounts due under this Note if Borrower sells, transfers or refinances the Project and causes the Project to be released from the burden of the instrument imposing the Income and Affordability Restrictions on the Project, except for release by reason of a foreclosure against the Project;
		3. fraud or willful misrepresentation;
		4. failure to pay taxes, assessments or similar charges that are, or are secured by, a prior lien on the Project, except to the extent this provision would result in all or any portion of the indebtedness evidenced by this Note being treated as a recourse liability under applicable Treasury Regulations;
		5. the retention of any rental income or other income arising with respect to the Project collected by Project Sponsor or Borrower after the holder hereof has given any notice that Borrower is in default and not applied such income to indebtedness secured by a prior lien on the Project or to expenses of ordinary operation or maintenance of the Project, to the full extent of the rental income or other income so collected and retained by Project Sponsor or Borrower;
		6. the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Project;
		7. commission of waste with respect to the Project; and
		8. breach of any environmental covenant or representation made by the Project Sponsor or Borrower relating to the Project.
5. **Assignment**. Lender may assign this Note without the consent of Borrower or Project Sponsor.
6. **Modifications and Waivers**. No provision of this Note may be waived, modified, discharged or canceled orally, but only in writing and signed by the party against whom enforcement of any waiver, modification, discharge or cancellation is sought. In case any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Note shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included. No provision herein shall impair any obligation of the Project Sponsor under the Subsidy Agreement.
7. **Governing Law**. The provisions of this Note shall be governed by the laws of the jurisdiction in which the real property which is subject to the Deed of Trust securing this Note is located except to the extent such law is contrary to or inconsistent with the laws, rules or regulations of the United States [FOR FEDERALLY CHARTERED INSTITUTIONS ADD or delete if not applicable):] or to the extent such law restricts activities otherwise permitted to federally chartered savings banks in which event the laws, rules and regulations of the United States shall govern.
8. **Counterparts.** This Note may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute and be one and the same instrument.

**Signature page to Promissory Note (AHP Program-Rental)**

|  |  |
| --- | --- |
|  |  |
|  | Borrower , a [state] [form of entity]By , [if applicable]Its  [capacity]By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title: |