

This Affordable Housing Program Direct Subsidy Agreement – Rental Project (this “Agreement”), effective as of the applicable date set forth in Paragraph 4 below, is made by and among the Federal Home Loan Bank of San Francisco (the “Bank”),

_____, (the “Member”) and
_____, a _____,

or its permitted assignee, (the “Project Sponsor”), in connection with _____
(the “Project”), as the Project is more fully described in the Member’s and the Project Sponsor’s Application (as such term is defined below) and the Bank’s form describing the approved Project (the “Project Evaluation Form”), to be attached hereto as Exhibit A. The Application and the Project Evaluation Form are incorporated herein by these references.

- A. Pursuant to Section 10(j) of the Federal Home Loan Bank Act and the regulations promulgated by the Federal Housing Finance Agency (the “Finance Agency”) thereunder, and the policies and procedures established by the Finance Agency in connection therewith (collectively, the “AHP Regulations”), the Bank has established an Affordable Housing Program (the “Bank’s AHP”).
- B. The Bank also has established an Affordable Housing Program Implementation Plan (the “Implementation Plan”) and policies, procedures, guidelines, and instructions covering, among other things, feasibility, funding, monitoring, and modifying affordable housing projects participating in the Bank’s AHP (collectively, the “Bank’s AHP Policies and Procedures”).
- C. The Member and the Project Sponsor desire to participate in the Bank’s AHP and have submitted an application through the Member to the Bank, as the same may be amended and conditionally approved by the Bank, and modified pursuant to the provisions of Paragraph 11 below, the AHP Regulations, and the Bank’s AHP Policies and Procedures (the “Application”), to obtain a subsidy in an amount approved by the Bank (the “Subsidy”) for use in the Project.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Bank, the Member, and the Project Sponsor hereby agree as follows:

Agreement

1. **Recitals.** The Recitals set forth in Paragraphs A through C above are incorporated herein in their entirety.
2. **Definitions.** All terms not defined herein shall have the respective meanings set forth in the AHP Regulations and the Implementation Plan. For purposes of this Agreement, “Borrower” means the maker of the AHP promissory note and the grantor or trustor under the deed of trust related to the Project in which the Member is the beneficiary. The Borrower must be an entity that has a direct ownership interest in the Project.

3. **Rules of Construction.**

In this Agreement,

- a) “Includes,” “including,” and similar terms are not limiting;
- b) “May not” and similar terms are prohibitive and not permissive;
- c) The singular includes the plural;
- d) “Or” is not exclusive;
- e) Any reference to a form, plan, policy, procedure, guideline, instruction, title, code, law, statute, ordinance, rule, regulation, order, or other governmental provision, or any part thereof, shall include the same as it may from time to time be amended; and

- f) In construing any ambiguity in this Agreement, the parties agree that this Agreement shall be interpreted in a neutral manner as to each of the parties notwithstanding any common law or statutory rule of construction that the terms of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The parties further agree that in the event of any uncertainty, this Agreement is to be interpreted in a manner that conforms to the requirements of the AHP Regulations, other regulations of the Finance Agency, and the Federal Home Loan Bank Act.
4. **Effective Date.** The Effective Date of this Agreement is the Project Approval Date set forth in the Project Evaluation Form for the Project subject to this Agreement.
 5. **Compliance.** The Member and the Project Sponsor, each, agree to comply, and to cause the Borrower to comply, with the AHP Regulations, the Bank's AHP Policies and Procedures, and the commitments made in the Application.
 6. **Approval of Application.** Approval of the Application by the Bank shall be conditional and shall be subject to the Member's and Project Sponsor's compliance with this Agreement, and subject to the Member's, Project Sponsor's and Borrower's compliance with the AHP Regulations, and the Bank's AHP Policies and Procedures. Approval shall be effective only upon written notice from the Bank to the Member.
 7. **Disbursement of Subsidy.** The Member may request disbursement of all or part of the Subsidy from the Bank at the time the Project is ready to receive all or part of the Subsidy, as the case may be. The Member and the Project Sponsor, as applicable, shall complete, and as applicable, cause the Borrower to complete, such forms and provide such information as is required by the Bank in order to disburse the Subsidy, as set forth in the Bank's AHP Policies and Procedures. Disbursement requests shall be processed in accordance with the AHP Regulations and the Bank's AHP Policies and Procedures. The Bank shall have the right, in its sole reasonable discretion, to withhold or deny disbursement of the Subsidy if, based on the information available to the Bank at the time of the Member's request for disbursement, the Bank is not satisfied as to (a) the Member's creditworthiness and compliance with the requirements of this Agreement, the AHP Regulations, the Bank's AHP Policies and Procedures, the Application, the Bank's Credit Program policies, and the Advances and Security Agreement by and between the Member and the Bank, and (b) the Project Sponsor's compliance with the requirements of this Agreement, the AHP Regulations, the Bank's AHP Policies and Procedures, and the Application. Prior to its initial disbursement of Subsidy for the Project, and prior to each subsequent disbursement if the Bank determines the need for Subsidy has changed, the Bank shall determine whether the Project meets the eligibility requirements of the AHP Regulations, the obligations committed to in the Application, and the requirements of the Bank's AHP Policies and Procedures; provided, further, that the Bank shall only disburse funds in an amount that does not exceed the need for Subsidy for the Project as determined by the Bank from time to time. In addition, the amount of the Subsidy disbursed by the Bank is subject to future adjustments to decrease the amount of the Subsidy where (a) the Subsidy is used to write down the principal or interest rate on a loan to the Project, and at closing of the loan, the debt service cost for the loan has decreased due to a decrease in market interest rates between the time of the Bank's approval of the Application and the time the lender commits to the interest rate on the loan to finance the Project or (b) the Bank determines, based on its periodic review or monitoring of the Project, or a review conducted in connection with the transfer or modification of the Project, that the amount of the Subsidy is not, or was not, necessary for the Project. The Repayment and Recovery Provisions set forth in Paragraph 15, below, shall apply where an adjustment is made by the Bank to decrease the amount of the Subsidy already disbursed by the Bank for the Project.
 8. **Timing of Subsidy.** The Member and the Project Sponsor acknowledge the time frames set forth in the Implementation Plan for the full disbursement of the Subsidy. In the event that the Member and the Project Sponsor fail to satisfy such timing requirements, the Bank will cancel up to the entire amount of the Subsidy awarded to the Project, in which case, the Repayment and Recovery Provisions set forth in Paragraph 15, below, shall apply with respect to any amount of the Subsidy already disbursed by the Bank for the Project.
 9. **Subsidy Pass Through.** The Member shall pass on to the Project the full amount of the Subsidy funded to the Member by the Bank.
 10. **Use of Subsidy.** The Member, the Project Sponsor and the Borrower, each, shall use the Subsidy only as set forth in the Application, and consistent with the requirements of this Agreement, the AHP Regulations, and the Bank's AHP Policies and Procedures.

11. **Modification.** Neither the Member nor the Project Sponsor nor the Borrower shall, without the prior written approval of the Bank, modify the Project, either prior to or after final disbursement of funds for the Project from all funding sources, in any way that will impact the original scoring or feasibility elements of the Project as described on the Project Evaluation Form (based on the Bank's scoring and feasibility standards and guidelines for the funding period in which the Project was approved for the Subsidy). In the event that the Member, the Project Sponsor or the Borrower proposes to modify the Project in any way set forth in the immediately preceding sentence, the Member and the Project Sponsor shall submit to the Bank a written request for approval to make the proposed modification. The written request shall describe the proposed modification in detail, and shall include all supporting documentation necessary for the Bank to evaluate the proposed modification in accordance with the AHP Regulations. The Bank may approve the modification only if it meets the requirements of the AHP Regulations and the Bank's AHP Policies and Procedures, and any Bank approval of a modification must be in a writing signed by the Bank.
12. **Monitoring.** The Member and the Project Sponsor each agree to perform, and to cause the Borrower to perform, their respective monitoring, notice, and certification requirements set forth in the AHP Regulations. The Member and the Project Sponsor each agree to obtain and maintain any Project-related documentation required by the Bank pursuant to the monitoring provisions of the AHP Regulations and the Bank's AHP Policies and Procedures. The long-term monitoring performed by each of the Member and the Project Sponsor shall be conducted pursuant to the applicable method for long-term monitoring set forth in the AHP Regulations, as approved by the Bank for the Project. The Member and the Project Sponsor each further agree to perform, and to cause the Borrower to perform, such other monitoring as may be required by the Bank's AHP Policies and Procedures, or as may otherwise be required by the Bank in its sole reasonable discretion.
13. **Access to Information.** Each of the Member and the Project Sponsor expressly authorizes the Bank, and the Project Sponsor expressly authorizes the Member, to audit the Project, including loan documentation and books and records of account, and to conduct on-site inspections of the Project during normal business hours, and upon reasonable advance notice. The Member and the Project Sponsor agree to fully cooperate in and with the Bank's review of the Project, and to promptly provide to the Bank all documents and information reasonably requested by the Bank, and to cause the Borrower to comply with any reasonable request by the Bank. The Project Sponsor agrees to fully cooperate in and with the Member's review of the Project, and to promptly provide to the Member all documents and information reasonably requested by the Member.
14. **Retention.**
 - a) The term "Retention Period" means fifteen (15) years from the date of Project completion.
 - b) Subject to the provisions of Paragraph 32 below, the Member shall ensure, and the Project Sponsor agrees, that the Project shall be subject to a deed restriction or other legally enforceable retention agreement or instrument consistent with the AHP Regulations, and requiring, at a minimum, that: (i) the Project's rental units, or applicable portion thereof, remain occupied by and affordable for households with incomes at or below the levels committed to in the Application for the duration of the Retention Period; (ii) the Bank or its designee be given notice of a sale, refinancing, foreclosure, or transfer in lieu of foreclosure of the Project occurring prior to the end of the Retention Period; (iii) in the case of a sale or refinancing of the Project prior to the end of the Retention Period, the Subsidy shall be repaid to the Bank in full, unless (a) the Project continues to be subject to a deed restriction or other legally enforceable retention agreement or instrument incorporating the income-eligibility and affordability restrictions committed to in the Application for the duration of the Retention Period, or (b) if authorized in a writing signed by the Bank in the exercise of its sole discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or instrument incorporating the income-eligibility and affordability restrictions committed to the Application for the duration of the Retention Period; and (iv) the income-eligibility and affordability restrictions applicable to the Project for purposes of the Bank's AHP shall terminate after title to the Project is transferred by any foreclosure or deed-in-lieu of foreclosure.
 - c) In the event that the Project is sold or refinanced prior to the end of the Retention Period without being subject to the deed restriction or retention agreement or instrument for the duration of the Retention Period as is required pursuant to this Paragraph 14 and the AHP Regulations, then the Repayment and Recovery Provisions set forth in Paragraph 15 below, shall apply, and the portion of the subsidy to be repaid to the Bank by the Member shall be the full amount of the Subsidy. If due to circumstances that are not a result of an action or omission of the Member, the Project Sponsor or the Borrower, the Project goes into foreclosure prior to the end of the Project's Retention Period, the Project Sponsor shall not be liable for repayment of the Subsidy, and the Member shall be required to recover and repay to the Bank only that amount of the Subsidy that the Member can recover through reasonable collection efforts by exercising its legal rights against the Project. If the Project goes into foreclosure due to an action or omission of the Member, the Project Sponsor or the Borrower, then the Repayment and Recovery Provisions of Paragraph 15, below, shall apply.

- d) The Project Sponsor shall notify the Bank in writing, with a copy to the Member, of a sale, refinancing, foreclosure, or transfer in lieu of foreclosure of the Project at least ten (10) business days prior to the anticipated happening of such an event. If the Project Sponsor is not the Borrower, the Project Sponsor shall take all necessary steps to ensure that the Borrower will notify the Project Sponsor and the Bank, in writing, with a copy to the Member, of a sale, refinancing, foreclosure, or transfer in lieu of foreclosure of the Project at least ten (10) business days prior to the anticipated happening of such an event.
- e) The Member and the Project Sponsor may, by a separate agreement, agree to a retention period for the Project that is longer than the Retention Period, as defined in Subparagraph 14(a) above, provided such agreement does not extend the Retention Period or affect related obligations under this Agreement. In any such case, any portion of the Subsidy repaid to the Member at any time, notwithstanding the terms of such a separate agreement, shall be promptly repaid to the Bank by the Member.

15. Repayment and Recovery Provisions.

a) *Member's Obligations*

1. **Noncompliance by Member.** The Member shall repay that portion of the Subsidy to the Bank, plus interest as may be required by the Bank consistent with the Bank's AHP Policies and Procedures, that as a result of the Member's actions or omissions is not used in compliance with the terms of this Agreement, the Application, or the requirements of the AHP Regulations and the Bank's AHP Policies and Procedures, unless such noncompliance is cured by the Member within a reasonable period of time, as determined by the Bank, or the circumstances of such noncompliance are eliminated through an approved modification of the Application, in accordance with the applicable provisions of the AHP Regulations and Paragraph 11 hereof.
2. **Noncompliance by Project Sponsor or Borrower.** The Member shall recover from the Project Sponsor or Borrower, or both, and repay to the Bank that portion of the Subsidy, plus interest as may be required by the Bank consistent with the Bank's AHP Policies and Procedures, that as a result of the actions or omissions of either the Project Sponsor or Borrower, or both, is not used in compliance with the terms of this Agreement, the Application, or the requirements of the AHP Regulations, unless such noncompliance is cured by the Project Sponsor or Borrower within a reasonable period of time, as determined by the Bank, or the circumstances of such noncompliance are eliminated through an approved modification of the Application in accordance with the applicable provisions of the AHP Regulations and Paragraph 11 hereof. For purposes of this Paragraph 15(a)(2), where the obligation to repay the Subsidy arises solely as a result of the actions or omissions of the Project Sponsor or the Borrower, or both, the Member shall not be obligated to the Bank for the return of the amount of the Subsidy that cannot be recovered from the Project Sponsor or the Borrower, or both, through reasonable collection efforts by the Member. The Member agrees to report in writing to the Bank the reasonable collection efforts taken by the Member.

b) *Project Sponsor's Obligations*

If either the Project Sponsor or the Borrower causes, as a result of its actions or omissions, Subsidy to not be used in compliance with the terms of this Agreement, the Application, or the applicable requirements of the AHP Regulations, then, unless such noncompliance is cured by the Project Sponsor or Borrower within a reasonable time, as determined by the Bank, or the circumstances of such noncompliance are eliminated through an approved modification of the Application in accordance with the applicable provisions of the AHP Regulations and Paragraph 11 of this Agreement, the following shall apply, as determined by the Bank in its sole discretion: (i) the Member shall recover the Subsidy (plus interest as required by the Bank consistent with the Bank's AHP Policies and Procedures) from the Project Sponsor or the Borrower, or both, and then the Member shall repay such amount to the Bank; or (ii) the Project Sponsor shall repay, or cause the Borrower to repay the Subsidy (plus interest as required by the Bank consistent with the Bank's AHP Policies and Procedures) directly to the Bank.

c) *Repayment Obligations*

The repayment obligations, if any, of the Member or the Project Sponsor, as the case may be, under this Agreement shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, the AHP Regulations, and the Bank's AHP Policies and Procedures under all circumstances, including the following circumstances: (i) any lack of validity or enforceability of any of the loan documents or other agreements relating to the Project, including any other agreement between the Member and the Project Sponsor pertaining to the Project (the "Related Documents"), or (ii) any amendment or waiver of or any consent to or departure from all or any of the Related Documents.

d) *Notices*

The Member or the Project Sponsor, as the case may be, shall promptly give written notice to the Bank of an occurrence of noncompliance with the requirements of the Agreement, the AHP Regulations, the Bank's AHP Policies and Procedures, or this Agreement at the earliest possible date after discovery of such noncompliance, and after said person has had reasonable time to investigate and evaluate the occurrence that may constitute noncompliance, but in any event, notice shall be given no later than fifteen (15) calendar days following discovery of an occurrence that constitutes noncompliance.

16. Finance Agency Compliance Determinations and Enforcement Proceedings.

- a) The Member and the Project Sponsor acknowledge that the Bank and the Bank's AHP are subject to the regulatory, supervisory, and examination authority of the Finance Agency. The Member and the Project Sponsor acknowledge further that pursuant to such authority, the Finance Agency may determine at any time, based on its review of the Bank's records for the Project, that the Subsidy has not been used in compliance with the terms of the Application or the requirements of the AHP Regulations, and that such noncompliance is the result of the Member's or the Project Sponsor's or Borrower's actions or omissions. If the Finance Agency makes such a determination, the Bank will notify the Member and the Project Sponsor in writing of the Finance Agency's determination and may require remedial action by the Member or the Project Sponsor, or both, in accordance with the terms of the AHP Regulations and this Agreement. The Member and the Project Sponsor agree that within thirty (30) calendar days after receipt of such notice, or within such other period of time as the Bank may approve, if the Member or the Project Sponsor have not otherwise made a request to the Bank under Paragraph 16(c), below, the Member or the Project Sponsor, or both, as may be directed by the Bank pursuant to a supervisory determination of the Finance Agency, shall cure the noncompliance, eliminate the noncompliance through an approved modification of the Application in accordance with the applicable provisions of the AHP Regulations and Paragraph 11 hereof, or repay the Subsidy to the Bank, all in accordance with Paragraph 15 above.
- b) Upon its own determination or pursuant to an order issued by the Finance Agency, the Bank may suspend or debar the Member or the Project Sponsor from further participation in the AHP due to (i) a pattern of noncompliance or (ii) a single instance of flagrant noncompliance with the AHP Regulations, the Bank's AHP Policies and Procedures, the Application, or this Agreement.
- c) Upon a written request to the Bank, and subject to an order of the Finance Agency permitting such participation, a Member or Project Sponsor, as applicable, may participate in any enforcement proceeding initiated by the Finance Agency regarding repayment of Subsidy, or regarding the suspension or debarment of the Member or the Project Sponsor. Any such participation by a Member or Project Sponsor shall be pursuant to the terms of the Finance Agency order and applicable law.

17. Loss of Member's Membership After Submission of Application.

- a) Pursuant to the AHP Regulations, a Bank shall accept applications for Subsidy under its competitive application program only from institutions that are members of the Bank at the time the application is submitted to the Bank. If the Member enters into an agreement to engage in a corporate merger or other corporate transaction ("Merger") that would result in the loss of the Member's membership in the Bank if the Merger became effective, then within ten (10) business days of entering into the Merger agreement the Member shall notify the Bank in writing of the pending Merger. If, on a date before the Project Approval Date that is, or would be, set forth in the Project Evaluation Form applicable to the Project, the Member loses its membership in the Bank or enters into a Merger agreement that in the Bank's judgment could result in loss of membership before the disbursement of Subsidy, then the Bank reserves the right, in its sole discretion, to treat the Application as withdrawn by the Member.
- b) Except as provided in subsections (c), (d), and (e) of this Paragraph 17, the Bank will only disburse Subsidy to the Member if it is a member of the Bank both on the initial date the institution requests a drawdown of Subsidy and on the date the Bank is prepared to disburse the Subsidy. The Member shall make best efforts to transfer its obligations under the approved Application for Subsidy to another member of the Bank in the event of the Member's loss of membership in the Bank prior to the Bank's final disbursement of Subsidy.
- c) If the Member receives approval of the Application by the Bank and then loses its membership in the Bank on a date after the Project Approval Date set forth in the Project Evaluation Form, but before the initial date of disbursement of the Subsidy, the Member and another member of the Bank may request that the Bank disburse that Subsidy to such other member of the Bank. If such other member executes a written agreement satisfactory to the Bank under which such other member assumes all the obligations of the Member with respect to the Project under this Agreement, including the representations made in the Application, the Bank may disburse the Subsidy to such other member.

- d) If the Member receives approval of the Application by the Bank and then loses its membership in the Bank on a date after the Project Approval Date set forth in the Project Evaluation Form, but before the initial date of disbursement of the Subsidy, and the Member, or its successor-in-interest, ("Transferred Member") becomes a member of another Federal Home Loan Bank ("FHLBank"), the Transferred Member may request that the Bank disburse that Subsidy to it. If the Transferred Member executes a written agreement satisfactory to the Bank under which the Transferred Member assumes all the obligations of the applicant with respect to the Project under this Agreement, including the representations made in the Application, and the other FHLBank enters into an appropriate agreement with the Bank, the Bank may disburse, through the other FHLBank, the Subsidy to the Transferred Member.
- e) If the Member receives approval of the Application by the Bank and then loses its membership in the Bank on a date after the initial partial disbursement of Subsidy, but before the final disbursement of Subsidy to the Member, then: (i) the Member may not request additional Subsidy for itself, or a successor, on the Project except pursuant to the standards of subsection (d) of this Paragraph 17; and (ii) the Member and another member of the Bank may request the disbursement of the remaining Subsidy to the other member of the Bank pursuant to the standards of subsection (c) of this Paragraph 17.
- f) If, after final disbursement of Subsidy to the Member, the Member undergoes an acquisition or consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the Member's obligations under this Agreement and the Application.

18. **Lending of Subsidy.** In the event that the Member lends the Subsidy to the Project Sponsor or Borrower, any repayments of principal and payments of interest received by the Member shall be promptly paid to the Bank.

19. **Environmental Indemnity.** The Member agrees to indemnify and hold the Bank harmless from and against all liabilities, claims, actions, foreseeable and unforeseeable, consequential damages, costs and expenses (including sums paid in settlement of claims and all reasonable consultant, expert, and legal fees and expenses of the Bank's counsel) or loss directly or indirectly arising out of or resulting from any Hazardous Substance (as such term is defined below) being present at any time, whether before, during, or after construction or rehabilitation, in or around any part of the Project, or in the soil, groundwater, or soil vapor on or under the Project, including those incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work, or any resulting damages or injuries to the person or property of any third parties or to any natural resources. For the purposes of this Paragraph 19, the term "Hazardous Substance" means any substance which is or becomes designated as "hazardous" or "toxic" under any federal, state, or local law. This indemnity shall survive the expiration or termination of this Agreement.

20. **Project Sponsor's Representations and Warranties.**

The Project Sponsor represents and warrants to the Bank as of the effective date hereof, on each funding date of the Subsidy, and as of the dates that the Project Sponsor provides monitoring information and certifications to the Bank as set forth in Paragraph 12 above and the AHP Regulations, the following:

a) *Existence*

The Project Sponsor and, if different from the Project Sponsor, Borrower have, or will have, or its permitted assignee will have, an ownership interest (including any leasehold, partnership or controlling interest in a non-profit affiliate that has a direct ownership interest) in the Project throughout the term of this Agreement, and each is in good standing in the State of its organization. The Project Sponsor and Borrower are duly qualified to do business in each State in which the ownership of its respective property or the nature of its respective business makes such qualification necessary and where the failure to so qualify would reasonably be expected to have a materially adverse effect on the business and operations of the Project Sponsor and Borrower. The Project Sponsor and Borrower have or will have all powers and all material governmental licenses, authorizations, consents, and approvals required to carry on its respective business as now conducted, except for such matters, the failure of which to so maintain, would not reasonably be expected to have a material adverse effect on the operations or financial condition of the Project Sponsor or Borrower.

b) *Power and Authority*

The execution, delivery and performance by the Project Sponsor of this Agreement and the Related Documents to which the Project Sponsor or Borrower is a party are within the corporate or other powers of the Project Sponsor or Borrower, have been duly authorized by all necessary action, do not contravene or constitute a default under any provision of applicable law or regulation or of any judgment, injunction, order, or decree binding on the Project Sponsor, Borrower, or either's property.

c) *Enforceability*

This Agreement and the Related Documents to which the Project Sponsor or Borrower is a party have been or will be duly executed and delivered and are, or upon execution will be, the valid and legally binding obligation of the Project Sponsor or Borrower, enforceable against the Project Sponsor or Borrower in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws or equitable principles relating to or limiting creditors' rights generally or the availability of equitable remedies.

d) *No Breach*

The consummation of the transactions contemplated hereby and the execution, delivery, and performance of this Agreement and the other Related Documents by the Project Sponsor or Borrower will not violate, or constitute or result in a material breach of or a default under, any agreement, mortgage, deed of trust, lease, loan or security agreement, corporate charter, articles, or bylaws, as applicable, or any other instrument to which the Project Sponsor or Borrower is a party or by which it may be bound or affected.

e) *Statements*

To the best knowledge of the Project Sponsor, after reasonable inquiry, the information given by the Project Sponsor in the Application and in other documents provided to the Bank, and in any oral statement made by the Project Sponsor, in connection with the Application and the Project, is complete and accurate in all material respects.

f) *Eligibility Standards; Use of Funds*

The Project meets, or will meet upon its completion, the applicable minimum eligibility standards set forth in the AHP Regulations. The Subsidy will be used only as set forth in the approved Application and consistent with the requirements of the AHP Regulations and the Bank's AHP Policies and Procedures.

21. Member's Representations and Warranties.

The Member represents and warrants to the Bank as of the effective date hereof, on each funding date of the Subsidy, and as of the dates the Member provides monitoring information and certifications to the Bank as set forth in Paragraph 12 above and in the AHP Regulations, the following:

a) *Power and Authority*

The execution, delivery, and performance by the Member of this Agreement and the Related Documents to which the Member is a party are within the corporate or other powers of the Member, have been duly authorized by all necessary action, do not contravene or constitute a default under any provision of applicable law or regulation or of any judgment, injunction, order, or decree binding on the Member or its property.

b) *Enforceability*

This Agreement and the Related Documents to which the Member is a party have been or will be duly executed and delivered and are, or upon execution will be, the valid and legally binding obligation of the Member, enforceable against the Member in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws or equitable principles relating to or limiting creditors' rights generally or the availability of equitable remedies.

c) *No Breach or Default*

The consummation of the transactions contemplated hereby and the execution, delivery, and performance of this Agreement and the other Related Documents by the Member will not violate, or constitute or result in a material breach of or a default under, any agreement, mortgage, deed of trust, lease, loan or security agreement, corporate charter, articles, or bylaws, as applicable, or any other instrument to which the Member is a party or by which it may be bound or affected. To the best of the Member's knowledge, the Member is not in default under the Advances and Security Agreement.

d) *Statements*

To the best knowledge of the Member, after reasonable inquiry, the information given by the Member in the Application and in other documents provided to the Bank, and in any oral statement made by the Member, in connection with the Application and the Project, is complete and accurate in all material respects.

e) *Eligibility Standards; Use of Funds*

The Project meets, or will meet upon its completion, the applicable minimum eligibility standards set forth in the AHP Regulations and the District Eligibility Requirements set forth in the Implementation Plan. The Subsidy will be used only as set forth in the approved Application and consistent with the requirements of the AHP Regulations and the Bank's AHP Policies and Procedures.

22. **Assignment or Transfer of Ownership.** Neither the Member nor the Project Sponsor may (voluntarily or involuntarily or by operation of law or otherwise) assign or transfer any of its rights or obligations under this Agreement to any entity, including an affiliate of the Project Sponsor, without the express prior written consent of the Bank. Neither the Project Sponsor nor the Borrower may (voluntarily or involuntarily or by operation of law or otherwise) sell, assign or transfer ownership in the real property associated with the Project to any entity, including any affiliate of the Project Sponsor, without the express prior written consent of the Bank, provided however, the Project Sponsor may sell, assign or transfer an ownership interest in the real property associated with the Project as specified in the representations made by the Member and Project Sponsor in the approved Application.
23. **Amendment; Waivers.** No modification, amendment, or waiver of any provision of this Agreement or consent to any departure therefrom shall be effective unless executed by the parties to this Agreement. Any forbearance, failure, or delay by a party hereto, in exercising any right, power, or remedy hereunder or under law or regulation shall not be deemed to be a waiver thereof, and any single or partial exercise by a party of any right, power, or remedy shall not preclude the further exercise thereof. Every right, power, and remedy of a party shall continue in full force and effect until specifically waived by the party, in writing.
24. **Jurisdiction; Legal Fees.**
- a) In any action or proceeding brought by the Bank, the Member, or the Project Sponsor in order to enforce any right or remedy under this Agreement, the parties hereby consent to, and agree that they will submit to, the jurisdiction of the United States District Court for the Northern District of California or, if such action or proceeding may not be brought in federal court, the jurisdiction of the Superior Court of the City and County of San Francisco, to the exclusion of all other courts.
 - b) The Member, the Project Sponsor, and the Bank agree that if any action or proceeding is brought by any party seeking to obtain any legal or equitable relief against another party under or arising out of this Agreement or any transaction contemplated hereby, and such relief is not granted by the final decision, after any and all appeals, of a court of competent jurisdiction, the party that brought the unsuccessful action or proceeding will pay all attorneys' fees and other costs incurred by the other party(ies) in connection therewith.
25. **Applicable Law; Severability.** This Agreement shall be governed by the statutory and common law of the United States and, to the extent federal law incorporates or defers to state law, the laws of the State of California (excluding, however, the conflict of laws rules of the State of California). In the event that any portion of this Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Agreement that can be given effect without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.
26. **Successors and Assigns.** Subject to Paragraphs 17 and 22, this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Member, the Project Sponsor, and the Bank.
27. **Notices.** All notices and other communications shall be mailed, sent by facsimile or email transmission (with confirmation copy to follow via U.S. mail), or served personally on a party at the address indicated below, or at such other address as shall be designated by a party by future written notice to the other parties. Notice sent by facsimile or email transmission shall be effective on the date transmitted; notice sent by personal service shall be effective on the date of delivery; and notice sent by U.S. mail shall be effective three (3) business days after such communication is deposited in the mail with first class postage prepaid, addressed as aforesaid.
28. **Counterparts.** This Agreement may be executed by the parties hereto on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same Agreement.
29. **Headings.** Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
30. **Consents.** Any time the Bank's consent or approval is required hereunder, such consent or approval shall be consistent with the applicable requirements of the AHP Regulations and the Bank's AHP Policies and Procedures, and shall otherwise not be unreasonably withheld or delayed.

31. **Other Rights and Remedies.** Nothing in this Agreement shall be deemed in any way to limit the Bank's rights and remedies at law or in equity, or prevent the Bank from taking any action at law or in equity in the event of the Member's or the Project Sponsor's failure, for whatever reason, to comply with any provision of this Agreement, or to perform any promise or obligation or to satisfy any condition or requirement contained in this Agreement, the AHP Regulations, or the Bank's AHP Policies and Procedures. Nothing in this Agreement shall be deemed in any way to limit the Member's rights and remedies at law or in equity, or prevent the Member from taking any action at law or in equity in the event of the Project Sponsor's failure, for whatever reason, to comply with any provision of this Agreement, or to perform any promise or obligation or to satisfy any condition or requirement contained in this Agreement, the AHP Regulations, or the Bank's AHP Policies and Procedures.

32. **Entire Agreement.**

a) *In General*

Except as otherwise expressly provided in this Paragraph 32, this Agreement embodies the entire agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes all prior AHP direct subsidy agreements between the Member and the Bank that relate to the Project. Nothing in this Agreement or the AHP Regulations shall affect the legality of actions taken prior to January 1, 2007, that conformed to the prior applicable affordable housing program regulation and direct subsidy agreement between the Member and the Bank.

b) *Other Project Agreements*

To the extent that, prior to the Effective Date of this Agreement, the Member and the Project Sponsor have entered into any agreements pertaining to the Project to which the Bank is not a party, the terms of such prior agreements remain in full force and effect, provided however, in the event of any conflict between such prior agreements and this Agreement, unless otherwise expressly provided in this Agreement, the terms of this Agreement shall prevail.

c) *AHP Information Sharing Portal User Agreement*

To facilitate information sharing between and among the Member, the Project Sponsor, and the Bank with regard to the Project, the Bank uses an information sharing portal ("Portal"). The Member and Project Sponsor each acknowledges and agrees that any access or other use of the Portal is subject to the [AHP Portal User Agreement \("Portal User Agreement"\)](#). The Portal User Agreement is a part of and subject to this Agreement. In the event of a conflict between the terms of this Agreement and the Portal User Agreement, the Portal User Agreement will apply.

[Signature pages follow]

Project

Project Name

Member

Member Name

Address

City

State

Zip

By

Print Name

Title

By

Print Name

Title

Note: This form must be signed on behalf of the Member by one or two authorized signers, in accordance with the Member's authorizations on file with the Bank.

Project Sponsor

Project Sponsor Name

Address

City

State

Zip

By

Print Name

Title

Federal Home Loan Bank of San Francisco

By

Print Name

Title

By

Print Name

Title