**Do not include this cover page in the use of this Promissory Note and Retention Agreement.**

**Affordable Housing Program – AHP Homeownership Set-Aside Program: WISH
Promissory Note and Retention Agreement**

The member shall ensure that an Affordable Housing Program (AHP) project financed by the proceeds of a direct subsidy and/or a subsidized advance is subject to this promissory note and retention agreement evidencing solely the AHP subsidy in connection with the Project. This note and retention agreement does not apply to any other loan on the Project. In the event that the Lender elects to record a leasehold deed of trust, collateral assignment of lease, or other security instrument in connection with financing an AHP-Assisted Unit, this promissory note and retention agreement shall be attached to, or incorporated by reference into, such security instrument and/or recorded separately as a deed restriction. In such case, the promissory note and retention agreement may require the approval of the Secretary of the Interior pursuant to 25 USC § 415.

All subsidies disbursed by the member to an individual homebuyer must be secured by this note and retention agreement, a deed restriction, or another legally enforceable retention agreement or instrument consistent with the AHP regulations. Refer to the AHP retention, repayment, and recovery provisions described in the AHP Direct Subsidy Agreement—Homeownership Set-Aside Program.

This form document has been prepared to address the minimum retention requirements of the AHP Regulations for projects located on tribal trust or allotted land. 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 federal, state or tribal law. We strongly recommend that each member have its legal counsel review the documents to address any federal, state or tribal law requirements, including but not limited to consumer credit laws, notary requirements, and usury laws. The final note and retention agreement and any security documents must meet the requirements of your jurisdiction.

**AFFORDABLE HOUSING PROGRAM
PROMISSORY NOTE AND RETENTION AGREEMENT**

**(TRIBAL TRUST OR ALLOTTED LAND)**(AHP Homeownership Set-Aside Program: WISH)

$[\_\_\_\_\_\_\_\_\_\_\_\_\_] [date]

 [state]

FOR VALUE RECEIVED, [borrower], a [form of entity] (the “**Owner**”), promises to pay to [lender], a [form of entity] or its successor (the “**Lender**”), as holder of this Promissory Note and Retention Agreement, or order, the principal sum of  Dollars ($), or so much thereof as may be advanced hereunder as provided below. The funds disbursed by the Lender to the Owner under this Promissory Note and Retention Agreement (this “**Note and Agreement**”) were advanced to the Lender by the Federal Home Loan Bank of San Francisco (“**Bank**”) pursuant to the regulations governing the Federal Home Loan Bank Affordable Housing Program (the “**AHP**”). By signing this Note and Agreement, the Owner hereby agrees as follows:

**RECITALS**:

1. **Whereas**, pursuant to Section 721 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“**FIRREA**”), the Federal Housing Finance Agency (the “**Finance Agency**”) is required to cause each Federal Home Loan Bank to establish an affordable housing program to assist members of each Federal Home Loan Bank to finance affordable housing for very low-, low-, or moderate-income households.
2. **Whereas**, the Bank has also established an Affordable Housing Program Implementation Plan, which includes Homeownership Set-Aside programs (the “**HSA Program**”), and policies, procedures, guidelines, and instructions covering, among other things, the use of the Bank’s AHP funds under the HSA Program, as amended from time to time (the “**Implementation Plan**”).
3. **Whereas**, the Lender, a member of the Bank, has obtained a commitment for funds from the Bank pursuant to an application to the Bank (the “**AHP Application**”) to obtain AHP Subsidy (defined below) to provide for low-and-moderate income households in connection with the acquisition of housing units pursuant to the requirements of the Bank’s HSA program (the “**Project**”).
4. **Whereas**, pursuant to regulations (including, without limitation, those contained in 12 CFR Part 1291), as amended from time to time, and promulgated by the Finance Agency pursuant to FIRREA (the “**AHP Regulation**”), members of each Federal Home Loan Bank are required to provide for the repayment of any AHP Subsidy should said AHP Subsidy be unused or improperly used.
5. **Whereas**, in connection with the Project, the Lender entered into an Affordable Housing Program Direct Subsidy Agreement Homeownership Set Aside Program (“**AHP Agreement**”) with the Bank, pursuant to which the Lender agreed to be bound by the AHP Regulation, and the policies, procedures, guidelines and instructions covering, among other things, the use of the Bank’s AHP funds under the HSA Program (collectively along with the AHP Implementation Plan, the “**Bank’s AHP Policies and Procedures**”), and perform certain monitoring functions with respect to the Project and the AHP Subsidy.
6. **Whereas**, the Lender has disbursed or agreed to disburse the AHP Subsidy to the Owner in connection with the Owner’s acquisition of the AHP-Assisted Unit (defined below), and in connection with the AHP Subsidy, the Owner has executed this Note and Agreement to set forth those circumstances under which the Lender shall be entitled to the repayment by the Owner of the AHP Subsidy.
7. **Definitions**. As used in this Note and Agreement the following capitalized terms have the following meanings:

“**AHP-Assisted Unit**” means the real property commonly known as: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]and more particularly described on Exhibit A attached hereto and the improvements now on or at any time constructed on such property.

“**AHP Subsidy**” means the original principal amount of this Note and Agreement set forth above.

“**Loan**” means the advance of the AHP Subsidy evidenced by this Note and Agreement.

“**Loan Documents**” means this Note and Agreement and all other documents relating to or securing this Note and Agreement (as renewed, amended, modified, restated and extended from time to time).

“**Net Proceeds**” means:

1. In the case of a sale, transfer, or assignment of title or deed of an AHP-assisted unit by a household during the AHP five-year retention period, the sales price minus reasonable and customary costs paid by the household in connection with the transaction (including real estate broker’s commission, attorney’s fees, and title search fees) and outstanding debt superior to the AHP subsidy lien or other legally enforceable AHP subsidy repayment obligation;
2. In the case of a refinancing of an AHP-assisted unit by a household during the AHP five-year retention period, the principal amount of the new mortgage minus reasonable and customary costs paid by the household in connection with the transaction (including attorney’s fees and title search fees) and the principal amount of the refinanced mortgage.

“**Retention Period**” means five years from the date of the Owner’s closing on the AHP-Assisted Unit or, in the case of rehabilitation of a unit currently occupied by the Owner where there is no closing, five years from the date established by the Bank in its AHP Implementation Plan.

1. **Retention Period**. The Owner agrees to comply with the terms and conditions of this Note and Agreement during the Retention Period.
2. **The Loan**. The payment obligation described in this Note and Agreement represents the AHP Subsidy. The parties acknowledge and agree that the Lender has disbursed or is obligated to disburse the AHP Subsidy to the Owner, used or to be used in connection with the purchase of the AHP-Assisted Unit.
3. **Interest**. The indebtedness evidenced by this Note and Agreement shall not bear any interest except as provided below.
4. **Principal Residence Requirement; Notice of Sale or Refinancing or other Transfer**.
5. **Residence**. The Owner shall own and occupy the AHP-Assisted Unit as the Owner’s principal residence during the Retention Period. In case of a sale or transfer described in Section 6(d)(i) below, the transferee shall own and occupy the AHP-Assisted Unit as transferee’s principal residence during the balance of the Retention Period and shall execute a new retention agreement in substantially the form of this Note and Agreement agreeing to the obligations set forth herein.
6. **Notice**. The Owner shall give notice to the Lender and the Lender shall give notice to the Bank, of any proposed sale, transfer, assignment of leasehold interest, assignment of allotment, assignment of title or deed, or refinancing of the AHP-Assisted Unit during the Retention Period, including a transfer by foreclosure or deed in lieu of foreclosure. The Owner shall give such notice or cause such notice to be given at least ten business days in advance of the anticipated completion of the sale, transfer, assignment, or refinancing and to the extent practicable, shall not complete such sale, transfer, assignment unless the transferee has executed a new retention agreement in substantially the form of this Note and Agreement. The notice shall include all information necessary for determining whether any repayment will be due and payable under Section 6 of this Note and Agreement and, if any such payment will be due and payable, the amount of such payment and the basis for the determination of the amount.
7. **Repayment of this Note and Agreement**.
8. General. The Loan will not amortize. Subject to Section 7 below and unless earlier prepayment is required under subsection (d) below, payment of the principal balance of this Note and Agreement will be due and payable in full at the end of the Retention Period, provided that the Owner's liability on this Note and Agreement shall be reduced on a pro rata basis as described in Section 6(d)(i). Provided the Owner has owned and occupied the AHP-Assisted Unit as the Owner’s principal residence during the entire Retention Period and no default or breach has occurred and is continuing under this Note and Agreement or any other Loan Document and no misuse of the AHP Subsidy or noncompliance by the Owner with this Note and Agreement has occurred, the Owner shall be released from any obligation under this Note and Agreement and the Lender shall release this Note and Agreement at the end of the Retention Period.
9. Manner and Place of Payment. All payments due under this Note and Agreement shall be payable in lawful money of the United States of America at the designated office of the Lender or at such other address as the Lender may provide to the Owner.
10. Optional Prepayment. The Owner shall have the right to prepay all or a portion of the principal due under this Note and Agreement without any charge or penalty being made therefore.
11. Mandatory Prepayment.

* + 1. *Sale, Transfer, Assignment, or Refinancing*. In the case of a sale, transfer, assignment of leasehold interest, assignment of allotment, assignment of title or deed, or refinancing of the AHP-Assisted Unit by the household during the Retention Period, the Owner shall repay the Lender the lesser of: (A) the amount of AHP Subsidy reduced on a pro rata basis per month for every year that the Owner owned and occupied the AHP-Assisted Unit during the Retention Period; or (B) any Net Proceeds from the sale, transfer, or assignment of lease, allotment, title or deed of the AHP-Assisted Unit, or the refinancing, as applicable, minus the AHP-Assisted Unit’s investment, unless one of the following exceptions applies:
			1. in the case of a sale, transfer or assignment of the AHP-Assisted Unit, the subsequent purchaser, transferee, or assignee is a low- or moderate-income household as defined in the AHP Regulation, and as determined by the Bank pursuant to the Bank’s AHP Policies and Procedures;
			2. in the case of a refinancing, following the refinancing, the AHP-Assisted Unit continues to be subject to this Note and Agreement, a deed restriction or other legally enforceable retention agreement incorporating the income eligibility, notice requirements and the obligations and restrictions described in this Note and Agreement and the AHP Regulation for the remainder of the Retention Period; or
			3. the amount of the AHP Subsidy that would be required to be repaid in accordance with the calculation in this section is $2,500 or less.

The Owner shall maintain documentation of their household investments and capital improvements in case the AHP-Assisted Unit is sold, transferred, assigned or refinanced during the Retention Period.

1. Subsidy Repayment to the Bank. TheLender’s obligation to repay the AHP Subsidy to the Bank is governed by the Bank’s AHP Policies and Procedures.
2. **Effect of Foreclosure, Transfer by Deed-in-lieu, Assignment of First Mortgage, or Death of Owner**. The obligation to repay the AHP Subsidy to the Lender and to the Bank and the requirement that the AHP-Assisted Unit be occupied during the Retention Period as provided in Section 5(a) shall terminate if leasehold or legal title to the AHP-Assisted Unit is transferred by foreclosure or deed-in-lieu of foreclosure, if the first leasehold mortgage on the AHP-Assisted Unit is assigned to the Department of Housing and Urban Development (HUD), or after the death of the Owner. If the AHP-Assisted Unit is located on land held in trust by the United States government for a Native American tribe or individual tribal member or is otherwise held in restricted status, is located on Native land in the State of Alaska conveyed by the Alaska Native Claims Settlement Act, or is located on Hawaiian Home Lands created under the Hawaiian Homes Commission Act of 1920, then neither the Lender nor the Bank shall have the right to sell, foreclose or occupy the AHP-Assisted Unit.
3. **Attachment to Improvements; No Encumbrance of Real Property**. Subject to Section 7, regarding the effect of foreclosure or deed-in lieu of foreclosure, or assignment of the first mortgage on the AHP-Assisted Unit to the Secretary of HUD, this Note and Agreement requires that the AHP-Assisted Unit be owned and occupied during the Retention Period by a low- or moderate-income household, as defined in 12 CFR 1291.1 or other applicable section of the AHP Regulation or theBank’s AHP Policies and Procedures. All of the covenants and restrictions herein shall run with and encumber the AHP-Assisted Unit and shall bind the Owner and the Lender during the Retention Period but shall not attach to any real property underlying the AHP-Assisted Unit.
4. **Monitoring**. The Owner agrees to comply with all requests by the Lender for information or documentation arising from the Lender’s obligation to obtain information from the Owner under the AHP Regulation, AHP Application, AHP Agreement or the Bank’s AHP Policies and Procedures.
5. **Secured Obligations**. In the event that the Lender elects to record a leasehold deed of trust, collateral assignment of lease, or other security instrument in connection with financing the AHP-Assisted Unit, this Note and Agreement shall be incorporated by reference into such security instrument or attached to such security instrument and such security instrument will secure (a) the Owner’s obligation to repay the AHP Subsidy under the terms and conditions of this Note and Agreement and (b) performance of the Owner’s other obligations under this Note and Agreement.
6. **Recording this Note and Agreement**. In the event that the Lender elects to record a leasehold deed of trust, collateral assignment of lease, or other security instrument in connection with financing the AHP-Assisted Unit, this Note and Agreement shall be attached to, or incorporated by reference in, and made a part of such security instrument to be recorded in the official records of the county where the AHP-Assisted Unit is located and in the Bureau of Indian Affairs Land Titles and Records Office.
7. **No Offset**. The Owner hereby waives any rights of offset it now has or may hereafter have against the Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note and Agreement.
8. **Waiver**. The Owner and any endorsers or guarantors of this Note and Agreement, for themselves, their heirs, legal representatives, successors and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, dishonor and non-payment of this Note and Agreement, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitations as a defense to any demand on this Note and Agreement or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred.
9. **Joint and Several Obligations**. If more than one person is the Owner of the AHP-Assisted Unit, their obligations under this Note and Agreement shall be joint and several, and references in this Note and Agreement to Owner shall be deemed to refer to each of such persons.
10. **Address for Notices**. Notices to the Bank under this Note and Agreement shall be sent to the following address [\_\_\_\_\_\_\_\_\_\_\_\_\_\_].
11. **Governing Law**. The provisions of this Note and Agreement shall be governed by the laws of the jurisdiction in which the real property described herein is located, and if there is no such applicable law then the laws of the state where the real property is located, except to the extent such law is contrary to or inconsistent with the laws, rules or regulations of the United States.
12. **Attorneys' Fees**. If an action is instituted on this Note and Agreement, the Owner 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.
13. **Modifications and Waivers**. No provision of this Note and Agreement 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 and Agreement 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 and Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included.
14. **Counterparts.** This Note and Agreement 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.

**[Owner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**

|  |  |  |
| --- | --- | --- |
| STATE OFCOUNTY OF |  | ss. |

**[INSERT APPROPRIATE NOTARY LANGUAGE FOR APPLICABLE STATE]**