

PROMISSORY NOTE SECURED BY DEED OF TRUST

CITY OF SOUTH SAN FRANCISCO AFFORDABLE HOUSING PROGRAM

\$3,115,000

South San Francisco, California

FOR VALUE RECEIVED, the undersigned, Synergy Community Development Corporation, a California nonprofit public benefit corporation (“**Borrower**”) promises to pay to the City of South San Francisco, a California municipal corporation, (“**City**), at 400 Grand Avenue, South San Francisco, California 94080, or any other place designated in writing by City to Borrower, in lawful money of the United States a principal sum THREE MILLION ONE HUNDRED AND FIFTEEN THOUSAND DOLLARS (\$3,115,000) or so much thereof as may be advanced by City pursuant to the Loan Agreement referred to and defined below, together with interest on the outstanding principal balance in accordance with the Loan Agreement and in accordance with the terms and conditions described herein (the “**Loan**”). Capitalized terms used but not defined herein shall have the same meaning as set forth in the Loan Agreement.

1. Loan. This Promissory Note (this “**Note**”) has been executed and delivered pursuant to the terms of a Loan Agreement dated evenly herewith (the “**Loan Agreement**”) between Borrower and City, which details the terms and conditions under which City agrees to lend to Borrower and Borrower agrees to borrow up to \$3,115,000 to fund certain acquisition costs associated with the Project. The rights and obligations of Borrower under this Note shall be governed by the Loan Agreement and by the terms set forth in this Note.

2. Interest. Interest shall accrue on the Loan at a rate of simple interest per annum as follows: (i) zero percent (0%) from the Effective Date through the first (1st) anniversary of the Effective Date; (ii) one percent (1%) from the first (1st) anniversary of the Effective Date through the second (2nd) anniversary of the Effective Date; (iii) two percent (2%) from the third (3rd) anniversary of the Effective Date through the 4th anniversary of the Effective Date; and (iv) three percent (3%) from the fourth (4th) anniversary of the Effective Date through the Maturity Date (defined below). Otherwise, the Loan shall accrue interest at the Default Rate, as set forth in this Note, until such default is cured.

3. Maturity Date. Annual payments shall be due and payable on a residual receipts basis in accordance with the formula set forth below. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the City Documents shall be payable in full on the fifteenth (15th) anniversary of the date that City issues the final certificate of occupancy for the Project (the “**Maturity Date**”).

If payment is due, payment will first be applied to outstanding interest and then to any outstanding principal until the Note is paid as set forth herein. In the event this payment is less than accumulated interest owed plus current interest, any unpaid interest shall carry over to the following year. Interest shall not compound on this interest carry-over.

4. Annual Payment from Residual Receipts. Commencing on April 1 following the first (1st) anniversary of the City's issuance of a final certificate of occupancy for the Project, and on each April 1 thereafter, Borrower shall pay to City a share of fifty percent (50%) of all Residual Receipts (defined below) generated by the Project during the previous calendar year to reduce the indebtedness owed under this Note. The City's pro-rata share shall be based on the ratio that the original principal amount of the City's Loan bears to the sum of the original principal amounts of all loans made to the Borrower that are payable from Residual Receipts, including any other loan from the City and any loan from the County of Contra Costa. Payments shall be accompanied by Borrower's calculation of Residual Receipts for the previous calendar year and 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. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to any accrued interest, and then to principal. No later than November 1 of each year during the term hereof beginning after the first (1st) anniversary of the City's issuance of a final certificate of occupancy for the Project, if requested by City, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimation of Residual Receipts.

(a) **"Residual Receipts"** means 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. Residual Receipts shall also include (a) condemnation awards for a permanent taking of part or all of the Property or the Project; and (b) 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.

(b) **"Gross Revenue"** means for each calendar year during the Term, 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 (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 Project for a temporary period; 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; and 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.

(c) **"Annual Operating Expenses"** means for each calendar year during the Term, 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; all state and local property and other taxes and annual assessments imposed on the Project; premiums for property damage and liability insurance; 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 that have been approved by the City and which are secured by deeds of trust (each, an “**Approved Loan**”); utility services not paid for directly by tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair, including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial and supplies; any annual license or certificate of occupancy fees required for operation of the Project; general administrative expenses including but not limited to advertising and marketing, security services and systems, and professional fees for legal, audit and accounting; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the City; deposits into a reserve for capital replacements of Project improvements in an amount no more than Five Hundred Dollars (\$500) per unit per year or such greater amount as reasonably required by the holder of an Approved Loan or Borrower's organizational documents; deposits into an operating reserve in such reasonable amounts as are approved by the City, or in such amounts reasonably required by the holder of an Approved Loan or Borrower's organizational documents. Annual Operating Expenses shall not include the following: debt service payments on any loan which is not an Approved Loan, including without limitation, unsecured loans; depreciation, amortization, depletion or other non-cash expenses; capital expenditures; expenses paid for with disbursements from any reserve account; any amount paid to Borrower, or any entity controlled by the persons or entities in control of Borrower (unless such payment consists of fees paid to a property management agent or resident services agent, to the Project developer, to the Borrower's general partners, or the asset management fee, or as otherwise set forth in the Borrower's organizational documents).

5. Excess Proceeds. Notwithstanding subsection (c) above, during the 15-year tax credit compliance period under Section 42 of the Internal Revenue Code, if Borrower or the tax credit limited partnership that owns the Project (the "Partnership") receives net proceeds from a refinancing of secured indebtedness on the Project, a capital transaction, or any other non-operating event generating net proceeds to the Partnership (each, a "Capital Event"), Borrower shall use commercially reasonable efforts to apply a portion of such net proceeds toward repayment of the Loan; provided, however, that (i) any such repayment shall be made only from net proceeds remaining after the payment of all transaction costs, senior secured indebtedness, required reserves, and any priority distributions or payments owed to the tax credit investor or limited partners under the Partnership's limited partnership agreement or operating agreement (collectively, "Priority Obligations"); (ii) Borrower shall not be required to make any repayment under this subsection (d) to the extent such repayment would cause a default under the Partnership's limited partnership agreement, any senior loan documents, or any regulatory agreement with a state or federal agency; and (iii) Borrower shall not be required to make any repayment under this subsection (d) that would jeopardize the Project's compliance with Section 42 of the Code or the terms of any tax credit regulatory agreement. Borrower shall provide the City with written notice of any intent to refinance or execute any other qualified Capital Event not later than thirty (30) days prior to the expected closing date of such event, together with a summary of expected net proceeds and the application thereof, including the expected repayment of all or a

portion of the City Loan. The City shall review the Borrower's notice and provide comments or approval not later than fifteen (15) calendar days following receipt of the notice. After closing of any Capital Event, Borrower shall provide the City with written notice of the Capital Event within thirty (30) days of closing, together with a summary of net proceeds and the application thereof. For the avoidance of doubt, this subsection (d) shall not create any obligation to sell, refinance, or otherwise cause a Capital Event to occur.

6. Due on Sale. The entire unpaid principal balance and all interest and other sums accrued under this Note shall be due and payable upon the Transfer, absent City consent, of all or any part of the Project or the Property or any interest therein other than a Transfer permitted without City consent pursuant to the Regulatory Agreement. Without limiting the generality of the foregoing, except in the case of Permitted Transfers (defined in the Regulatory Agreement), the Note shall not be assumable without City's prior written consent, which consent may be granted or denied in City's sole discretion.

7. Termination for Infeasibility. If no Borrower Event of Default has occurred and is ongoing, and Borrower is unable to obtain financing necessary to purchase the Project despite Borrower's timely and good faith efforts to obtain such financing, that may include but is not limited to IIG, AHSC, MHP, tax credits, bonds, conventional mortgages or low-income housing tax credit equity, or philanthropic sources, Borrower may terminate this Note by giving notice to the City prior to the Maturity Date, and Borrower shall immediately repay all principal and interest due under this Note to the City.

8. Prepayment. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest (if any) on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. The Regulatory shall remain in full force for the entire term thereof regardless of any prepayment of the Loan

9. Security. This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date hereof, executed by Borrower for the benefit of City and encumbering Borrower's fee simple estate in the property described therein. City shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, and the Loan Agreement. The Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan, and the sole recourse of the City with respect to the principal of, or interest on, this Note shall be to the property described in the Deed of Trust.

10. Event of Default. In the event Borrower commits an Event of Default pursuant to the Loan Obligations, Borrower shall be in default under of the terms and conditions of this Note and the Deed of Trust, and City may demand immediate and full payment of the total outstanding principal amount of the Note and any accrued interest under the Loan Obligations, and/or may initiate foreclosure proceedings under the Deed of Trust.

11. No Waiver or Consent. The failure by City to assert its right upon the occurrence of an

Event of Default, or the waiver by City of its rights upon any Event of Default, shall not constitute a consent to or waiver of City's rights with respect to any other Event of Default.

12. Default Interest. Upon the occurrence of any Event of Default, the interest rate on the sums as to which Borrower is in Default (including principal, if City has elected to declare it immediately due and payable) shall be the lower of (i) Three Percent (3%) per annum, or (ii) the highest rate then allowed by law, commencing as of the date of the Default until paid in full, or until the Default as been cured, whichever is applicable.

13. Borrower's Waivers.

(A) Additional Security. Borrower expressly agrees that City may accept further security for this Note, all without in any way affecting the obligations of Borrower under this Note.

(B) Original Liability. No extension of time for payment of this Note or any installment hereof made by agreement by City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(C) Obligations Absolute. The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

(D) Waivers. Borrower hereby waives (i) any notice of default or delinquency in addition to any notice expressly required by this Note; (ii) notice of acceleration; (iii) any notice of nonpayment in addition to any notice required by this Note; (iv) notice of costs, expenses, losses and interest thereon; (v) notice of interest on interest and late fees; (vi) diligence in taking any action to collect any sums owing under the Note or in proceeding against any of the rights and interest in and to properties securing payment of the Note; and (vii) presentment for payment, demand, protest, and notices of dishonor and/ or protest.

14. City Forbearance. No waiver of any breach, default or failure of condition under the terms of this Note, the Loan Agreement, Deed of Trust, Regulatory Agreement, or the obligations secured thereby, shall be implied from any failure of City to take, or any delay by City in taking, action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of this Note or the Loan Agreement must be made in writing and shall be limited to the express written terms of such waiver.

15. Notice. Except as otherwise specified herein, all notices to be sent pursuant to this Note shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

(A) personal delivery, in which case notice is effective upon delivery;

- (B) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (C) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (D) electronic mail, in which case notice shall be deemed delivered upon transmittal, provided that, (i) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery (in which case notice shall be deemed given two business days after the duplicate is deposited in the mail), or (ii) receipt is voluntarily acknowledged by the Party to be noticed (in which case notice shall be deemed given when acknowledged).

CITY:

City of South San Francisco
 400 Grand Avenue
 South San Francisco, CA 94080
 Attention: City Manager

BORROWER:

Synergy Community Development Corporation
 600 Corporate Pointe, Suite 215
 Culver City, CA 90230

Attention:

16. Miscellaneous Provisions.

- (A) Successors and Assigns. This Note (i) may not be assigned by Borrower without City's written consent, (ii) can be assigned by City, at its sole option, and (iii) shall be binding on all successors and assigns of City and Borrower.
- (B) Attorneys' Fees. If City elects to employ any of the remedies available to it in connection with any Event of Default, Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with the City's enforcement of this Note and the exercise of any or all of its rights and remedies.
- (C) Severability. If a court of competent jurisdiction finds any provisions of this Note invalid or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby, and all other provisions of this Note shall remain in full force and effect.
- (D) Time. Time is of the essence in the performance of the terms and conditions of this Note.
- (E) Governing Law. The laws of the State of California shall govern this Note.

- (F) Amendment. This Note may not be changed orally, but only by an amendment in writing signed by Borrower and approved by City.
- (G) Headings. The headings within this Note are for the purpose of reference only and shall not limit or otherwise affect any of the terms of the Note.
- (H) Assumptions. The Loan, including this Note, may not be assumed in whole or in part without the prior written consent of City, which consent shall be given or withheld at the sole discretion of City. City may condition its consent to an assumption of the Loan on the satisfaction of conditions reasonably required by City at the time of the assumption. Conditions may include, but not be limited to, City's satisfaction, in its sole discretion, with the proposed assuming party's ability to meet the Loan obligations, the payment of an assumption fee and reimbursement of City's fees and costs incurred by reason of the assumption.
- (I) Electronic Signature. Borrower may deliver the executed version of this Note by electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g. www.docusign.com) or other transmission method and any such signature delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. No party may raise the use of any image transmission device or method of the fact that any signature was transmitted as an image as a defense to the enforcement of this Note.

Executed this Note on

BORROWER:

Synergy Community Development Corporation
a California nonprofit public benefit corporation

By: _____