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NOTICE TO BORROWER: THIS PROMISSORY NOTE IS SECURED BY A DEED OF TRUST AND CONTAINS PROVISIONS RESTRICTING TRANSFERS AND INCLUDES A BALLOON PAYMENT PROVISION.

CALIFORNIA HOUSING FINANCE AGENCY

**PROMISSORY NOTE
PERMANENT LOAN
CalHFA Development No. _____**

(Mixed-Income Loan Program/Residual Receipts)

\$ _____

Sacramento, California
[DATE]

FOR VALUE RECEIVED, the undersigned, [BORROWER], with its principal office at c/o _____ (the "**Borrower**"), hereby promises to pay to the order of California Housing Finance Agency, 500 Capitol Mall, Suite 1400, Sacramento, California 95814 (the "**Agency**") or holder hereof ("**Holder**"), a principal amount equal to _____ Dollars (\$ _____), or so much of that amount that the Agency shall have advanced to or for the benefit of the Borrower (the "**Loan**"). The obligation of the Borrower is subject to the terms of all the Loan Documents as such term is defined in that certain document entitled "California Housing Finance Agency, Regulatory Agreement, (Mixed-Income Loan Program/Residual Receipts), CalHFA Development No. _____" executed by and between the Borrower and the Agency and imposed upon the Development as defined below (the "**Regulatory Agreement**"). Capitalized terms used below and not otherwise defined have the meanings given to them in the Regulatory Agreement. The Borrower also promises to pay to the order of the Holder interest at the rates, in the amounts and at the times hereinafter provided. All sums owing hereunder are payable in lawful money of the United States of America, in immediately available funds.

1. Borrower's Obligation. This Promissory Note evidences the obligation of the Borrower to the Agency for the repayment of funds loaned to the Borrower by the Agency to provide all or a portion of the acquisition/rehabilitation and permanent financing for a multifamily rental housing development (the "**Development**") on the real property described in the Loan Documents.

2. Prohibition against Transfer of Interest. Except as otherwise permitted under the terms of the Regulatory Agreement, the Borrower shall not make any sale, assignment, conveyance or transfer in any other form, nor any further pledge, encumbrance or mortgaging of the Development or any part thereof or of any of its interest therein, without the prior written consent of the Agency.

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3. Repayment Terms. The Borrower agrees to pay the indebtedness evidenced by this Promissory Note. Interest shall accrue and payments shall be made by the Borrower to the Agency according to the following schedule:

(a) Commencing on the day of the advance of funds by the Agency to Borrower, simple interest shall accrue on the outstanding principal balance at the rate of _____ (_____ %) per annum.

(b) Annual payments of accrued interest and outstanding principal shall be made from the Development's Residual Receipts ("**Residual Receipts Payment**"), in accordance with the terms of the Regulatory Agreement.

(c) Annual Residual Receipts Payments shall be due on the earlier of (i) thirty (30) days from the date of Agency approval of the Development Financial Report, as defined in the Regulatory Agreement, or, (ii) one hundred fifty (150) days after the end of each fiscal year. Annual Residual Receipts Payments shall commence after the end of the first full fiscal year following the Closing of the Loan ("**Initial Payment Date**").

(d) The Residual Receipts Payment shall be applied first to accrued interest and any remaining amounts shall be applied to pay down the principal, except that if the Agency shall have made additional advances under the terms of the Loan Documents, and such advances not have been repaid, any moneys received by the Agency pursuant to the provisions hereof, at the option of the Agency, may be applied first to the repayment of such advances and interest thereon and the balance, if any, shall be applied as aforesaid.

(e) If not sooner paid, all amounts due under this Promissory Note shall be due on _____ ("**Maturity Date**").

4. Security. This Promissory Note is secured by, among other things, that certain Permanent Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") of even date herewith executed by Borrower as fee owner of the subject real property, and as trustor, to a trustee for the benefit of Agency.

5. Late Charge. The Borrower agrees that it would be impracticable or extremely difficult to fix the actual damage to the Holder in the event the Borrower shall be late in the making of any payment due hereunder. Therefore, in the event the Borrower shall fail to make any such payment within ten (10) days after the due date thereof, the Holder hereof, at its option and in addition to any other remedy hereunder, may impose upon the Borrower, and the Borrower shall pay, a "late charge" of two percent (2%) of the amount of such delinquent payment.

6. Place and Manner of Payment. All amounts due and payable under this Promissory Note and the Loan Documents are payable at the principal office of the Agency set forth above, or at such other place or places as the Holder hereof may designate to the Borrower in writing from time to time. In order to assure timely payment to Agency of accrued interest,

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principal, fees and late charges due and owing under the loan evidenced by this Promissory Note, Borrower hereby irrevocably authorizes Agency to directly debit Borrower's funds deposited with Agency, if any, including accrued interest thereon, for payment when due of all such amounts payable to Agency. Borrower represents and warrants to Agency that Borrower is the legal owner of said funds. Written confirmation of the amount and purpose of any such debit shall be given to Borrower by Agency not less frequently than monthly.

7. Application of Payments. All payments received on account of this Promissory Note shall be first applied to accrued interest and the remainder shall be applied to the reduction of principal, except that if the Holder hereof shall have made additional advances under the terms of the Loan Documents and such advances shall not have been repaid, any moneys received by the Holder pursuant to the provisions hereof, at the option of the Holder, may be applied first to the repayment of such advances and interest thereon and the balance, if any, shall be applied as aforesaid.

8. Application of Overpayments. If at any time the Borrower shall have paid interest hereunder in an amount greater than the amount then due, such excess amount, at the option of the Holder, may be deposited by the Holder in a reserve fund for the Development established by the Holder or credited on the payment next due hereunder.

9. Borrower's Waivers. The Borrower and every guarantor of this Promissory Note, or of the obligation represented by this Promissory Note, hereby waives: (a) notice of default or delinquency; (b) notice of acceleration; (c) notice of non-payment; (d) notice of costs, expenses and losses and interest thereon; (e) notice of interest on interest and late charges; (f) diligence in taking any action to collect any sums owing under this Promissory Note or in proceeding against any of the rights and interests in and to properties securing payment of this Promissory Note; (g) presentment for payment, demand, protest, and notices of dishonor and of protest; (h) the benefits of all waivable exemptions; and (i) all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Promissory Note, in whole or in part, whether before or after maturity and with or without notice.

10. Default Under Other Loan Documents and Acceleration. All covenants, conditions and agreements contained in the Deed of Trust, Regulatory Agreement, and the other Loan Documents are hereby made a part of this Promissory Note. The Borrower agrees that the unpaid balance of the then principal amount of this Promissory Note, together with all accrued interest thereon and charges owing, shall, at the option of the Holder or, if so provided in any Loan Document executed by the Borrower, shall automatically, become immediately due and payable, and thereafter until paid bear interest at the rate of ten percent (10%) per annum or, if lesser, at the maximum rate permitted by law upon the failure of the Borrower to make any payment hereunder as and when due; upon the failure of the Borrower to perform or observe any other term or provision of this Promissory Note after lapse of any expressly applicable cure period, or upon the occurrence of any event (whether termed default, event of default or similar term) which under the terms of the Deed of Trust, Regulatory Agreement, or of the other Loan Documents shall entitle the Holder or the Agency to exercise rights or remedies thereunder, after any notice and cure period if provided for in the Deed of Trust.

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11. Attorney Fees, Costs. In any nonjudicial foreclosure process or other action to enforce or relating to any provision of the Loan Documents, the prevailing party shall be entitled to recover from the other party, its costs and expenses including attorney fees. The term “costs and expenses” as used herein shall include all costs and expenses actually and reasonably incurred including but not limited to attorney's fees and cost of suit; filing, motion, and jury fees; juror food and lodging; taping, videotaping, and transcribing depositions and travel expenses to attend depositions; service of process by a public officer, registered process server, or other means; expenses of attachment including keeper's fees; premiums on surety bonds; ordinary witness fees pursuant to Section 68093 of the Government Code; fees of expert witnesses whether or not ordered by the court; transcripts of court proceedings whether or not ordered by the court; court reporters fees as established by statute; investigation expenses in preparing the case for trial; postage telephone, and photocopying charges; costs in investigation of jurors or in preparation for voir dire; models, blowups and photocopies of exhibits, and any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal. Such costs and expenses shall be recoverable whether the services were rendered by a salaried employee of the party or by an independent contractor. In addition, Borrower agrees to pay reasonable costs, expenses, and attorney fees paid or incurred in connection with representing Agency or Holder in any bankruptcy, reorganization, receivership or other proceedings affecting creditors rights and involving a claim under the Loan Documents.

12. Prepayment. The Borrower may prepay the indebtedness evidenced by this Promissory Note prior to the Maturity Date.

13. Prevailing Terms. In the event of any inconsistencies between the terms of this Promissory Note and the terms of any other document related to the loan evidenced by this Promissory Note, the terms of this Promissory Note shall prevail.

14. Notices. Except as may be otherwise specifically provided herein, any approval, notice, direction, consent, request or other action by the Holder shall be in writing and may be communicated to the Borrower at the principal office of the Borrower set forth above, or at such other place or places as the Borrower shall designate to the Holder in writing, from time to time, for the receipt of communications from the Holder. The Holder shall provide a copy of any such notice to the tax credit limited partner of the Borrower at the address and subject to the conditions and limitations provided in the Regulatory Agreement.

15. Nature of Obligations. No person or entity shall be a mere accommodation maker, but each shall be primarily and directly liable hereunder.

16. Governing Law. This Promissory Note shall be construed in accordance with and be governed by the laws of the State of California.

17. Severability. If any provision of this Promissory Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

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18. Time. Time is of the essence in this Promissory Note.

19. No Waiver by the Agency. No waiver of any breach, default or failure of condition under the terms of this Promissory Note or the Loan Documents or the obligations secured thereby shall be implied from any failure of the Holder or the Agency to take, or any delay 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 Promissory Note or the Loan Documents or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

20. Nonrecourse Obligation. Neither the Borrower nor any partner of the Borrower shall have any direct or indirect personal liability for payment of the principal of, or interest on, this Promissory Note. The sole recourse of the Holder hereof with respect to the principal of, or interest on, this Promissory Note shall be to the property securing the indebtedness evidenced by the Promissory Note. No judgment, or execution thereon, entered in any action, legal or equitable, on this Promissory Note or the Deed of Trust securing this Promissory Note shall be enforced personally against the Borrower or, if the Borrower shall be a partnership, any partner of the Borrower, but shall be enforced only against the Development and such other or further security as, from time to time, may be hypothecated for this Promissory Note; provided, however, that nothing contained in the foregoing limitation of liability shall: (a) limit or impair the enforcement against all such security for this Promissory Note of all the rights and remedies of the Holder hereof; or (b) be deemed in any way to impair the right of the Holder hereof to assert the unpaid principal amount of this Promissory Note as a demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on this Promissory Note; nothing contained therein is intended to relieve the Borrower and, if Borrower is a partnership, any general partner of Borrower of liability for: (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the real property described in the Loan Documents that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges), except to the extent this provision would result in all or any portion of the indebtedness evidenced by this Promissory Note being treated as a recourse liability under Treasury Regulation 1.752-1(a)(1) and 1.752-2, as amended from time-to-time; (iii) the retention of any rental income or other income arising with respect to the Development collected by Borrower after the Holder hereof has given any notice that Borrower is in default to the full extent of the rental income or other income retained and collected by Borrower after the giving of any such notice; (iv) the fair market value as of the time of the giving of any notice referred to in subparagraph (iii) above of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Loan Documents after the giving of any notice referred to above; and (v) 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 Development; and (vi) breach of any environmental covenant or representation made by the Borrower relating to the Development.

BORROWER:

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By: **DRAFT – DO NOT EXECUTE**

Name: _____

Title: _____

By: **DRAFT – DO NOT EXECUTE**

Name: _____

Title: _____

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