



AFFORDABLE HOUSING PROGRAM DIRECT SUBSIDY AGREEMENT AND MEMORANDUM OF UNDERSTANDING RENTAL PROJECT

This Affordable Housing Program Direct Subsidy Agreement -- Rental Project (the "Agreement"), in the amount of «char dir sub amt» effective as of the applicable date set forth below in Paragraph 4, is made by and among the Federal Home Loan Bank of New York (the "Bank"), «cust name» (the "Member") and «spons name»,

- (a) a private non-profit corporation organized under § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code; or
- (b) a state housing agency, a local housing authority, a state within the United States of America, a commonwealth within the United States of America, or a municipality or political subdivision of a state or commonwealth within the United States of America; or
- (c) a native American tribe; or
- (d) a private for-profit organization,

in connection with «proj name» -- #«proj fhfb id» (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) to the Affordable Housing Program dated «proj appl date». The Application and the Affordable Housing Program Subsidized Advance/Direct Subsidy Commitment dated «commencement date» ("Commitment") are incorporated herein by these references.

A. Pursuant to § 10(j) Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*), and the regulations promulgated by the Federal Housing Finance Board (the "Finance Board") thereunder, and the policies and procedures established by the Finance Board 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 a competitive application through the Member to the Bank (the "Application"), as the same may be amended and conditionally approved by the Bank, and modified pursuant to the provisions of Paragraph 12, below, the AHP Regulations and the Bank's AHP Policies and Procedures, 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 are 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 meanings set forth in the AHP Regulations and the Implementation Plan.

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; and

(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.

4. Effective Date. This Agreement shall be effective: *(check appropriate box)*

- (a) on January 1, 1998, if the Project was initially awarded a Subsidy by the Bank prior to January 1, 1998, but the Subsidy was not fully funded as of such date, subject to the provisions of Paragraph 33, below; or
- (b) on the Project Approval Date, as such date is set forth in the Commitment, if the Project was initially awarded a Subsidy by the Bank after January 1, 1998.

5. Compliance. The Member and the Project Sponsor, each, agree 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 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. Operational Feasibility and Need for the Subsidy. In accordance with § 951.5 (b)(2)(iii) of the AHP Regulations, the Project must be operationally feasible, as specified in the Bank's Implementation Plan and the Bank's AHP Policies and Procedures. Furthermore, the requested Subsidy must be necessary for the financial feasibility of the Project. In order to ensure that the approved amount of the Subsidy continues to be warranted at the time of the actual funding date(s), the Bank reserves the right to reevaluate the level of AHP subsidy on an on-going basis throughout the development of the Project. The Bank, in its sole discretion, will only fund that portion of the Subsidy deemed necessary by the Bank to maintain the Project's operational and financial feasibility. During such reevaluation, the Bank will consider financial data including, but not limited to:

- a) All sources of funds, including estimates of funds from all other sources, whether actually committed to the Project or not;
- b) Project costs including, as reflective in the Project's development budget, all reasonable and customary costs in light of industry standards for the geographic location of the Project and long-term financial needs; and

- c) Prior to the time of the actual disbursement of the Subsidy, the Bank shall determine whether the Project is operationally feasible, in accordance with the Bank's Implementation Plan and the Bank's AHP Policies and Procedures, including but not limited to, applicable financial ratios, geographic location, needs of the Project households, and other non-financial characteristics of the Project. The approved amount of the Subsidy must continue to be necessary for the financial feasibility of the Project and the rate of interest, points, fees, and other charges for all loans financing the Project must not exceed a market rate of interest, fees, and other charges for loans of similar maturity, terms, and risk.

8. Funding. 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 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 funding and monitoring procedures and guidelines and the Bank's Policies and Procedures.

(i) When the disbursement of the Subsidy is needed, the Bank will require the Member to furnish specific information and documentation substantiating the use of the Subsidy to be funded. A copy of the Bank's AHP Funding Request Checklist, attached hereto, details some of the types of supporting documentation which the Bank requires at the time that a draw down of the Subsidy is requested.

(ii) Funding 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 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 funding the Bank is not satisfied as to

- a) the Member's creditworthiness and compliance with the requirements of 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 the AHP Regulations, the Bank's AHP Policies and Procedures, and the Application. Upon receipt of the Member's request for funding, the Bank shall reevaluate the amount of the Subsidy in accordance with Paragraph 7, above.

(iii) In addition, the amount of the Subsidy funded 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 that the lender commits to the interest rate on the loan to finance the Project; or
- b) the Bank determines, based on the Bank's 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 16, 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.

9. Timing of Subsidy. The Member and the Project Sponsor acknowledge the time frames set forth in the Implementation Plan, the Application, and the Bank's AHP Policies and Procedures for the full disbursement of the Subsidy.

- a) **The Bank reserves the right to cancel up to the entire amount of the Subsidy committed to the Member on behalf of the Project (the “Commitment”) if the Member and the Project Sponsor fail to satisfy such time frame requirements, subject to the Bank’s evaluation of the circumstances regarding unforeseen delays that may be experienced in the development of the Project. In such a case, the Repayment and Recovery Provisions set forth in Paragraph 16, below, shall apply with respect to any amount of the Subsidy already disbursed by the Bank for the Project.**
- b) **If the Member has not requested a disbursement of all or part of the Subsidy by the second anniversary date of the Commitment, and the Project Sponsor has failed to either obtain building permits or procure financing commitments from the Project’s remaining funding sources, the Bank reserves the right to unconditionally cancel the Commitment, consistent with the requirements of the AHP Regulations and the Bank’s AHP Policies and Procedures.**
- c) If the Member has not requested a disbursement of all or part of the Subsidy by the third anniversary date of the Commitment, the Bank reserves the right to unconditionally cancel the Commitment, consistent with the requirements of the AHP Regulations and the Bank’s AHP Policies and Procedures.

10. Subsidy Pass Through. The Member shall pass on to the Project Sponsor the full amount of the Subsidy funded to the Member by the Bank. In turn, the Project Sponsor shall pass on to the Project the full amount of the Subsidy funded to the Project Sponsor by the Member.

11. Use of Subsidy. The Member and the Project Sponsor shall use the Subsidy only as set forth in the Application, and consistent with the requirements of the AHP Regulations and the Bank’s AHP Policies and Procedures.

12. Modification. Neither the Member nor the Project Sponsor shall, without the prior written approval of the Bank, modify the Project in any way that will impact the original scoring or feasibility elements of the Project as described on the Commitment (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 or the Project Sponsor proposes to modify the Project in such a way that would impact the original scoring or feasibility elements, the Member 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.

13. Monitoring. The Member and the Project Sponsor each agree to perform their respective monitoring, notice and certification requirements set forth in the AHP Regulations. The long-term monitoring to be 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 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 discretion.

- a) During the period of construction or rehabilitation, the Member must take appropriate steps to ensure that “reasonable progress” is being made towards completion of the Project. As such, the Project sponsor or owner is required to submit verifiable evidence to the Member that the Project is being developed in accordance with the terms and conditions of the approved AHP application as well as the AHP Regulations. In turn, the Member must coordinate this documentation and provide the Bank with a semi-annual report (or as otherwise directed by the Bank) which certifies the status of the development of the Project.
- b) Within one year of the completion of the construction and/or rehabilitation of the Project and its placement into operation, the Member must review supporting documentation prepared by the Project Sponsor or owner and certify to the Bank that: i) the Project is habitable, as defined in § 951.1 of the AHP Regulations; ii) the Project meets its income targeting commitments; and iii) the rents charged for income-targeted units do not exceed the maximum levels specified and approved in the AHP application. Such certification must be acknowledged and executed by an officer duly authorized by the Member’s Board of Directors.
- c) In addition to the appropriate certification, the Bank will require a comprehensive report on all AHP-assisted projects in order to satisfy the initial AHP monitoring requirements. During this phase, the Bank may specifically request information or materials which are needed to substantiate certain levels of performance for the Project which were either not submitted or not available during the AHP subsidy funding process. In turn, the Bank will review all supporting documents and formally evaluate the Project’s ability to comply with the AHP Regulations and meet the terms and conditions of the original application as approved (or, if applicable, subsequently modified).
- d) The AHP Regulations require the Bank to monitor rental projects for a period of 15 years. In regard to a rental project which has qualified for low income housing tax credits, the Member (on behalf of the project Sponsor and/or owner) may request the Bank to rely upon the monitoring efforts of the housing agent which allocated the tax credits. In regard to all other rental projects, the Member and the project Sponsor (and/or owner) must jointly certify to the Bank on an annual basis, beginning on the second anniversary date of Project completion (i.e., issuance of the final certificate of occupancy), that a) the tenants’ rents and incomes are in compliance with the rent and income targeting commitments made in the AHP application; and b) the project is habitable.
- e) For rental projects receiving \$500,000 or less in AHP subsidy, the Member must also certify to the Bank, at least once every three years (per the Bank’s written notification) beginning on or about the third anniversary date of Project completion, that the Project appears to be suitable for occupancy based on an exterior visual inspection of the property. Furthermore, the Member must also obtain a current rent roll (or some other acceptable summary of Project tenant names, household incomes, and corresponding rents) and appropriate third-party income source documents for tenants from the Project Sponsor and/or owner and, in turn, furnish the Bank with such items.
- f) Household income shall be defined as total annualized reportable income as specified in the Bank’s policy guidelines. Area median income and very low-, low-, and moderate-income levels shall be defined according to guidelines as published by the U.S. Department of Housing and Urban Development (“HUD”). The Bank has already furnished the HUD median income data, adjusted for family size, for the Project’s statistical area. For rental projects, rents charged to any very low-income household (i.e., a household whose annual income equals 50% or less of the area median) cannot exceed 30% of the maximum income for a very low-income household, adjusted for family size, in the statistical area in which the project is located.

14. 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. 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.

15. Retention.

- (a) The term "Retention Period" means fifteen (15) years from the date that the construction or rehabilitation of the Project is completed and the Project is fully operational. This date shall be determined by the Bank and shall generally coincide with the date of the issuance of the final certificate of occupancy for the Project site(s).
- (b) Subject to the provisions of Paragraph 33, 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 to households with incomes at or below the levels committed to in the Application for the duration of the Retention Period; and (ii) the Bank or its designee be given 30 days written notice of a sale, refinancing, foreclosure or transfer in lieu of foreclosure of the Project occurring prior to the end of the Retention Period; and (iii) in the case of a sale or refinancing of the Project prior to the end of the Retention Period, the Subsidy be repaid to the Bank in full, unless the Project continues to be subject to the deed restriction or retention agreement or instrument incorporating the income eligibility and affordability commitments set forth in the Application, as the same may be adjusted annually according to the current applicable median income data, 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 foreclosure.
- (c) (i) (A) In the case of a sale or refinancing of the Project prior to the end of the Retention Period, unless, for the duration of the Retention Period, the Project continues to be subject to the deed restriction or retention agreement or instrument incorporating the income eligibility and affordability commitments set forth in the Application, as the same may be adjusted annually according to the current applicable median income data, or
- (B) In the event that the Project is sold to an entity ineligible under the Bank's AHP, then:
- (I) the events described above in either or both of subparagraphs (A) or (B), as then appropriate, shall be deemed to be a noncompliance by the Project Sponsor or Owner as a result of the Project Sponsor's actions or omissions,
- (II) the Repayment and Recovery Provisions set forth in Paragraph 16(a)(ii), below, shall apply, and
- (III) the portion of the Subsidy to be repaid, with interest as specified in Paragraph 16(a)(ii), below, shall be the full amount of the Subsidy,

provided, however, that if any such sale or refinancing of the Project, as described in subparagraphs (A) and (B) above, shall occur solely as a result of the actions or omissions of Member, then the provisions of Paragraph 16(a)(i), below, shall apply and the portion of the Subsidy to be repaid, with interest as specified in Paragraph 16(a)(i), below, shall be the full amount of the Subsidy.

- (ii) (A) If due to circumstances that are not a result of an action or omission of either the Member or the Project Sponsor, the Project goes into foreclosure prior to the end of the Project's Retention Period,

neither the Project Sponsor nor the Member shall be personally liable for repayment of the Subsidy, but the Member shall be required to recover and repay to the Bank only that amount of the Subsidy that the Member can recover through Member's "reasonable collection efforts", as defined in the last sentence of Paragraph 16(a)(ii), below.

(B) If due to circumstances that are a result of an action or omission of either the Member or the Project Sponsor, the Project goes into foreclosure prior to the end of the Project's Retention Period, then the respective Repayment and Recovery Provisions of Paragraph 16, below, shall apply, as appropriate.

(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 thirty (30) 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 AHP Retention Period, as defined in Subparagraph 15(a) above. In any such case, if any portion of the Subsidy is repaid to the Member during or at the conclusion of the extended retention period, pursuant to the terms of such a separate agreement, said portion shall be promptly repaid to the Bank by the Member.

16. Repayment and Recovery Provisions.

(a) *Member's Obligations*

i. 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 the Application or the requirements of the AHP Regulations, 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 12, above.

ii. Noncompliance by Project Sponsor. The Member shall recover from the Project Sponsor 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 Project Sponsor's actions or omissions, is not used in compliance with the terms of the Application or the requirements of the AHP Regulations, unless such noncompliance is cured by the Project Sponsor 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 12, above. For purposes of this Paragraph 16(a)(ii), where the obligation to repay the Subsidy arises solely as a result of the Project Sponsor's actions or omissions, 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 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. The Bank, the Member, and the Project Sponsor hereby agree that foreclosure upon the Security Agreement document (to be executed between the Member and the Project Sponsor) is deemed to be a "reasonable" collection effort, notwithstanding any inability by the Member to successfully recoup the entire AHP Subsidy from a foreclosure judgment.

(b) *Project Sponsor's Obligations*

The Project Sponsor shall repay to the Member and the Member shall repay to the Bank that portion of the Subsidy, plus interest as required by the Bank consistent with the Bank's AHP Policies and Procedures, that as a result of the Project Sponsor's actions or omissions, is not used in compliance with the terms

of the Application or the applicable requirements of the AHP Regulations, unless such noncompliance is cured by the Project Sponsor 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 12 hereof.

(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 but not limited to: (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, except that action taken or omitted in accordance with any such amendment, waiver or consent by the Bank or any such approved departure shall not, without more, give rise to a repayment obligation or be deemed to be an occurrence of noncompliance with the requirements of the AHP Regulations, the Bank's AHP Policies and Procedures or this Agreement.

(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 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 which 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.

17. Finance Board 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 Board. The Member and the Project Sponsor acknowledge further that pursuant to such authority, following due notice to Member and the opportunity to intervene in a Petition for review of a Supervisory Determination under 12 C.F.R. Part 903, the Finance Board 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 actions or omissions. If the Finance Board makes such a determination, the Bank will notify the Member and the Project Sponsor in writing of the Finance Board'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 17(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 Board, 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 12 hereof, or repay the Subsidy to the Bank, all in accordance with Paragraph 16, above.

(b) Upon its own determination, following due notice to Member, or pursuant to an order issued by the Finance Board, the Bank, following due notice to Member, 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) Subject to the conditions stated in this Paragraph 17(c) and in the applicable AHP Regulations, the Member and the Project Sponsor, consent to be parties in any enforcement proceeding initiated by the Finance Board regarding repayment of the Subsidy, or regarding the suspension or debarment of the Member or the Project Sponsor, and agree to be bound by the Finance Board's final determination in the proceeding, except that the Member shall not be deemed to have waived any right to obtain judicial review of such determination as provided by law.

18. Transfer of Subsidy. In the event of its loss of membership in the Bank prior to the Bank's final funding of the Subsidy, the Member is prohibited from requesting any disbursement of all or part of the subsidy. The Member shall use its best efforts to transfer its obligations under the Application and this Agreement to another Bank member, subject to the formal consent of the Bank.

19. Lending of Subsidy. The Member acknowledges that the Subsidy shall be disbursed to the Project Sponsor in the form of a conditional grant, in accordance with the Bank's AHP Policies and Procedures. The AHP Regulations prohibit the Member from either lending the Subsidy to the Project Sponsor or collecting principal payments or accrued interest thereon. However, in the event that the Project Sponsor, in the role of a general partner, decides to lend the Subsidy to a limited partnership organization that shares an ownership interest in the Project, any repayments of principal and payments of interest received by the Project Sponsor shall be promptly repaid to the Bank.

20. Environmental Indemnity.

(a) *In General*

The Project Sponsor agrees to indemnify and hold the Bank and the Member harmless from and against all liabilities, claims, actions, costs and expenses for bodily injury and tangible property damage caused by a Pollution Event (including sums paid in settlement of claims and all reasonable consultant, expert and legal fees and expenses), provided such costs and expenses are necessary and incurred and they are for the necessary expenses incurred in the investigation, removal, remediation, neutralization or immobilization of contaminated soil, surface water, ground water, or other contamination (a "Pollution Event") directly arising out of or indirectly resulting from any Hazardous Substance (as such term is defined below) being present at any time after the Project Sponsor takes ownership of the Project, whether before, during or after construction or rehabilitation by the Project Sponsor, in or around any part of the Project, or in the soil, groundwater or soil vapor on or under the Project. For the purposes of this Paragraph 20, the term "Hazardous Substances" means discharge, dispersal, release, or escape (excluding that caused directly or indirectly by terrorism, war, act of foreign enemy, hostilities whether war is declared or not, civil war, rebellion, revolution, insurrection, military or usurped power, strike, riot or civil commotion) of any solid, liquid, gaseous or thermal irritant, contaminant or pollutant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste (but excluding radioactive or nuclear materials or uranium or plutonium) from the Project. This indemnity shall survive the expiration or termination of this Agreement but in no event shall such indemnity extend beyond the applicable statute of limitations period for claims for bodily injury and tangible property damage arising out of or directly resulting from any Hazardous Substance from the Project.

(b) *Effective Date.*

The duties and obligations of Project Sponsor set forth in subparagraph 20(a) above shall apply to the Project which is the subject of this Agreement and that was initially awarded the Subsidy on or after January 1, 1998, but in no event prior to the date that Project Sponsor actually obtains title to the Project.

21. 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 13, above, and the AHP Regulations, the following:

(a) *Existence.*

The Project Sponsor has, or will have, or its permitted assignee will have, an ownership interest (including any partnership interest) in the Project, and is in good standing in the state of its organization. The Project Sponsor is 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 where the failure to so qualify would reasonably be expected to have a materially adverse affect on the business and operations of the Project Sponsor.

The Project Sponsor has 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.

(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 is a party are within the corporate or other powers of the Project Sponsor, 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, or its property.

(c) *Enforceability*

This Agreement and the Related Documents to which the Project Sponsor 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, enforceable against the Project Sponsor in accordance with their respective terms.

(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 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 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 the Member, and in any oral statement made by the Project Sponsor, in connection with the Application and the, Project, are 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 12 C.F.R. § 951.5 of the AHP Regulations. The Subsidy will be used only as set forth in the Application, consistent with the requirements of the AHP Regulations and the Bank's AHP Policies and Procedures.

22. 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 13, above, and in accordance with 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.

(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, are 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 12 C.F.R. § 951.5 of 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 will be consistent with the requirements of the AHP Regulations and the Bank's AHP Policies and Procedures.

23. Assignment. 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 hereunder without the express prior written consent of the Bank, *provided, however*, that the Project Sponsor may assign its rights and obligations hereunder to a limited partnership of which the Project Sponsor or an entity wholly controlled by the Project Sponsor is a general partner without the Bank's prior written consent, if such limited partnership has an ownership interest in the Project and the assignment is in writing and consistent with the terms of the Application and the requirements of the AHP Regulations. The Project Sponsor shall notify the Bank in writing of any such assignment prior to funding of the subsidy. Furthermore, in the event that the Member fails to obtain or loses its membership in the Bank, the Bank may disburse subsidies to another member of the Bank to which the Member has transferred its obligations under the Application, or the Bank may disburse subsidies through another Federal Home Loan Bank District to a member of that Bank that has assumed the Member's obligations under the Application

24. Amendment; Waivers. No modification, amendment, or waiver of any provision of this Agreement or consent to any departure therefrom shall be effective unless set forth in writing and 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.

25. 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 Southern District of New York or, if such action or proceeding may not be brought in federal court, the jurisdiction of the New York State courts located in the City of New York, Borough of Manhattan to the exclusion of all other courts, unless it is determined that such action or proceeding must be in the jurisdiction where the Project is located.

(b) The Member, and the Project Sponsor agree to pay all attorneys fees and other costs incurred by the Bank in connection with any action or proceeding to enforce any right or remedy under this Agreement.

26. 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 New York (excluding, however, the conflict of laws rules of such State). 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.

27. Successors and Assigns. Where applicable law permits, 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.

28. Notices. All notices and other communications shall be mailed, or sent by a nationally recognized overnight delivery service, sent by facsimile transmission (with confirmation copy), 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 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, and notice sent by overnight carrier shall be effective the day following delivery of said notice to said carrier.

29. 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.

30. 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.

31. 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.

32. 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.

33. Entire Agreement.

(a) *In General*

Except as otherwise expressly provided in this Paragraph 33 and in Subparagraph 20(b) of this Agreement, 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, 1998, 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 prior to January 1, 1998, 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.

[Signature pages follow]

PROJECT: #«proj fhfb id»

PROJECT NAME: «proj name»

FEDERAL HOME LOAN BANK OF NEW YORK
101 Park Avenue, New York, NY 10178-0599
Attn: Community Investment Operations Department

By: _____

By: _____

Joseph Gallo
(Print Name)

Edwin T. Bird
(Print Name)

Vice President
Title

Community Investment Officer
Title

MEMBER : «cust_name»
«cust_contact_address»
«cust_contact_addtl_address»
«cust_city_state_zip»

By: _____

By: _____

(Print Name)

(Print Name)

Title

Title

PROJECT SPONSOR: «spons_name»
«spons_contact_address»
«spons_contact_addtl_address»
«spons_city_state_zip»

By: _____

By: _____

(Print Name)

(Print Name)

Title

Title

Revised formatting – 2/3/03