



AFFORDABLE HOUSING PROGRAM SUBORDINATE MORTGAGE FOR RENTAL PROJECTS

THIS SUBORDINATE MORTGAGE (“Mortgage”) is made on _____, _____ between _____ or its permitted assignee, (the “Sponsor”), and _____ (the “Lender”), and all who succeed to the Lender’s responsibilities (such as successors and assigns), a banking institution and a stockholder of the Federal Home Loan Bank of New York (“FHLB-NY”). The Lender is organized and exists under the laws of the State or Commonwealth of _____ and has its principal office at _____.

PROMISSORY NOTE

In consideration of the sum of _____ Dollars (\$_____), (hereafter referred to as the “Principal”) received by the Sponsor as a result of certain subsidy that the Lender obtained through the Affordable Housing Program (“AHP”) pursuant to Section 10(j) of the Federal Home Loan Bank Act (12 USC § 1430(j)) and the regulation of the Federal Housing Finance Agency promulgated thereunder, as amended from time to time, 12 CFR Part 1291 in connection with a certain parcel of real estate which is owned by the Sponsor (as described below), the Sponsor has signed an AHP Promissory Note (“Note”) of even date herewith. The Sponsor has promised to pay the amounts due under the Note in the event of the occurrence of certain circumstances as provided herein and to abide by all promises contained in the Note.

MORTGAGE AS COLLATERAL

1. This Mortgage is given to the Lender as security for the payment of amounts due and the performance of all promises under the Note and secures the real estate owned by the Sponsor described as follows (referred to as the “Project”):

All of the land located in the municipality of _____, County of _____, and State/Commonwealth of _____, specifically described as follows:

Address: _____

Section No.: _____ Block No.: _____ Lot No(s): _____

Also more particularly described in the Legal Description of the Project site, attached hereto as Exhibit A,

Together with:

- i) All buildings and other real improvements that now are or will be located on the site of the Project;
- ii) All fixtures, equipment and personal property that now are or will be attached to or used with the land, buildings and improvements of or on the site of the Project; and
- iii) All rights which the Sponsor now has or will acquire with regard to the Project.

SPONSOR'S ACKNOWLEDGEMENTS

2. The Sponsor acknowledges and understands that:

- a) The Project which is subject to this Mortgage has been designated as housing which, except as otherwise permitted under the AHP Regulation, must be occupied by and affordable to income-eligible households in accordance with the income-eligibility and affordability restrictions of the AHP Regulation and the commitments made in the Lender's approved application to the AHP, as provided in the Note, for a period of fifteen (15) years from the date of the issuance of the Project's Certificate of Occupancy (the "Retention Period"); and
- b) To ensure that the Project is operated by the Sponsor in accordance with the provisions of the FHLB-NY's AHP during the Retention Period, the Note has been executed by the Sponsor and contains restrictions governing the use and rental of the Project, and repayment obligations in the event of transfer, sale, or refinancing of the Project under certain circumstances.

SPONSOR'S PROMISES

3. In consideration for the benefits received as aforesaid, the Sponsor agrees to comply with all of the terms of the Note and this Mortgage which include:

- a) During the Retention Period, the Sponsor shall use the Project only as permitted by the Note and the AHP Regulation. In the event of breach of this promise (an "Event of Noncompliance"), the Sponsor hereby agrees to repay to Lender the amount of Principal that may be due pursuant to the Note together with such other sums as may be due under the Note.
- b) The Sponsor warrants title to the Project and will defend its ownership against all claims.
- c) The Sponsor shall pay all liens, taxes, assessments and other governmental charges made against the Project when due. The Sponsor will not claim any credit for any taxes paid on the Project against the Principal and any interest payable under the Note and this Mortgage.
- d) The Sponsor shall keep the Project in good repair, neither damaging nor abandoning it. The Sponsor will allow the Lender to inspect the Project upon reasonable notice.
- e) The Sponsor shall use the Project in compliance with all laws, ordinances and other requirements of any governmental authority.
- f) The Sponsor shall keep the Project insured against fire and other casualty in an amount acceptable to the Lender, naming the Lender as a loss payee thereon, as its interest may appear, and providing the Lender annually with a Certificate of Insurance evidencing such coverage.

AFFORDABLE HOUSING RESTRICTIONS

4. The Principal is not derived from Federal funds and is subject to the terms and conditions of this Mortgage, the Note, and the AHP Regulation, as amended from time to time.
5. The AHP Regulation, together with the FHLB-NY's procedures and restrictions that govern the use, transfer, sale, rental, and refinancing of the Project, have been established pursuant to the Lender's application to the FHLB-NY's AHP as well as the AHP Regulation.
6. Reference is made to the Note and the definitions of restrictions for the procedure in calculating the amount of Principal to be paid to the Lender by the Sponsor upon an Event of Noncompliance during the Retention Period, and for the determination of the restricted period of time.

RIGHTS GIVEN TO LENDER

7. The Sponsor, by pledging the Project to the Lender, gives to the Lender those rights stated in this Mortgage, all rights by law given to creditors who hold liens and also all rights the law gives to the Lender and/or the FHLB-NY under the AHP. Upon performance of the promises contained in the Note and Mortgage, the Lender will cancel this Mortgage at its expense.

DEFAULT AND RECAPTURE OBLIGATIONS

8. The Lender may declare the Sponsor in default on the Note and this Mortgage if:
 - a) The Sponsor fails to comply with the provisions of the AHP Regulation, this Mortgage, the Note, and any other agreements related to the AHP (hereinafter collectively referred to as the "Related Documents") that the Lender and Sponsor mutually executed when the Principal was initially approved and reserved for the Project.
 - b) The Sponsor fails to make any payment required by the Note and this Mortgage;
 - c) The Sponsor fails to keep any other promises made in this Mortgage;
 - d) The ownership of the Project is changed for any reason without compliance with any provisions set forth in the AHP Regulation, this Mortgage, the Note, or the Related Documents.
9. The Sponsor and Lender acknowledge that if the FHLB-NY determines through its own monitoring or the Lender informs the FHLB-NY that the Principal will not be or is no longer being used for the approved purposes in accordance with the Note and the AHP Regulation, and the noncompliance is the result of the Sponsor's actions or omissions, the Sponsor is liable to fully or partially repay the Lender the Principal and interest thereon, as determined by the FHLB-NY, as provided herein.
10. The Sponsor agrees to fully repay the Lender the Principal if the Project units cease to be occupied by and affordable for households with incomes at or below the levels committed to be served in the approved application for the Principal.
11. In the case of sale, refinance, or transfer of title in connection with the Project prior to the end of the Retention Period, the Sponsor acknowledges that the full amount of the Principal shall be repaid to the Lender, unless:

- a) The Sponsor agrees to provide the Lender and the FHLB-NY with written notice of such sale or refinancing in accordance with the provisions set forth in the Note; and
 - b) The Sponsor acknowledges that the full amount of the Principal shall be repaid to the Lender, unless:
 - i) The Project continues to be subject this Mortgage, the Note, a deed restriction or other legally enforceable retention agreement or mechanism that incorporates the income-eligibility and affordability restrictions committed to in the Lender's approved application to the AHP for the duration of the Retention Period; or
 - ii) If authorized by the FHLB-NY, in its sole discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income eligibility and affordability restrictions committed to in the Lender's approved application to the AHP for the remainder of the Retention Period.
12. The Lender and Sponsor agree that any repayment of the Principal, and any payments of interest thereon pursuant to section 9, must be repaid to the FHLB-NY forthwith.
13. If an Event of Noncompliance occurs that necessitates repayment of Principal, the Lender shall request that the Sponsor promptly reimburse the Lender for such amount.
- a) In the event the Sponsor fails to repay, the Lender shall exercise reasonable collection efforts to obtain repayment of the Principal that is due, and shall commence foreclosure proceedings against its lien on the Project in the event that such collection efforts are unsuccessful. Any repayment of the Principal that is realized from the foreclosure proceedings shall satisfy the Sponsor's obligation. The Sponsor agrees to pay all costs, including any legal fees, in the event that the Lender must refer this matter to an attorney or outside agency for collection and/or foreclosure of this Mortgage.
 - b) The income-eligibility and affordability restrictions applicable to the Project under the Note, this Mortgage, and the AHP Regulation shall terminate after any foreclosure proceedings.

LENDER'S RIGHTS UPON A DEFAULT OR EVENT OF NONCOMPLIANCE

14. If the Lender declares that the Note and this Mortgage are in default, all sums due and owing to the Lender as provided in the Note, this Mortgage, and the AHP Regulation shall be immediately due and payable. The Lender shall have, subject to the rights of prior liens, all rights given by law or set forth in this Mortgage, the Note, the Related Documents, and the AHP Regulation.

NO WAIVER BY LENDER

15. The Lender may exercise any right under this Mortgage or under any law, even if the Lender has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. The Lender does not waive its right to declare the Sponsor in default by making payments or incurring expense on behalf of the Sponsor.

EACH PERSON LIABLE

16. This Mortgage is legally binding upon the Sponsor or Owner and all who succeed to the Sponsor's responsibilities (such as successors and assigns). The Lender may enforce any of the provisions of the Note and this Mortgage against the Sponsor who signs this Mortgage or any such subsequent purchaser or owner.

SUBORDINATE LIEN

17. The lien of this Mortgage is subordinate to and subject only to the terms and provisions of any first mortgage loan or prior liens on the Project that have been executed contemporaneously herewith.

NO ORAL CHANGES

18. This Mortgage can only be changed by an agreement in writing signed by both the Sponsor and the Lender.

ACKNOWLEDGEMENT

19. The Sponsor acknowledges receipt of a true copy of this Mortgage at no charge.

SIGNATURES

20. The Sponsor agrees to the terms of this Mortgage by signing the following page.

[Signature page to follow.]

IN WITNESS WHEREOF, the undersigned representative of the Sponsor executes this Mortgage on the day and year first above written:

WITNESS:

(Sponsor name)

(Signed)

(Printed name of authorized representative)

(Title)

STATE/Commonwealth OF _____:

ss.

COUNTY OF _____:

BE IT REMEMBERED that on this _____ day of _____ in the year _____ before me personally appeared _____ who, being by me duly sworn deposes and makes proof to my satisfaction that he/she is the _____ of the Sponsor, the corporation named within the Mortgage; that this is the Mortgage for the described Project; that the execution, as well as the making of this instrument, have been duly authorized by virtue of authority from its Board of Directors (or Trustees) and are the voluntary acts and deeds of the Sponsor; that deponent well knows the corporate seal of the Sponsor; and that the seal affixed to the Note is the proper corporate seal and was thereto affixed.

Sworn to and subscribed before me, the undersigned, the date aforesaid.

Notary Public