



AFFORDABLE HOUSING PROGRAM DIRECT SUBSIDY AGREEMENT AND MEMORANDUM OF UNDERSTANDING – OWNER-OCCUPIED PROJECT

This Affordable Housing Program Direct Subsidy Agreement and Memorandum of Understanding – Owner-Occupied Project (the “Agreement”), is made by and among the Federal Home Loan Bank of New York (“FHLB-NY”), _____ (the “Member”) and _____ (the “Sponsor”), in connection with _____ – # _____ (the “Project”), as the Project is more fully described in a certain application (as such term is defined below in Paragraph (C) that the Member and the Sponsor submitted to the Affordable Housing Program (“AHP”) dated _____.

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 Agency (the “Finance Agency”) thereunder, and the policies and guidelines established by the Finance Agency in connection therewith and published in the Federal Register under 12 C.F.R. Part 1291 (collectively, the “AHP Regulation”), the FHLB-NY has established and administers an AHP (the “FHLB-NY’s AHP”).

B. The FHLB-NY also has established an *AHP Implementation Plan* (the “Implementation Plan”) and related policies, procedures, guidelines and instructions that cover, among other things, the feasibility, funding, monitoring, and modification of affordable housing projects that participate in the FHLB-NY’s AHP and receive AHP funds through the FHLB-NY (collectively, the “FHLB-NY’s AHP Policies and Practices”).

C. The Member and the Sponsor, desiring to participate in the FHLB-NY’s AHP, have submitted a certain competitive application to the FHLB-NY through the Member (the “Application”), as the same may be amended and conditionally approved by the FHLB-NY, and modified pursuant to the provisions of ¶ 12, below, the AHP Regulation and the FHLB-NY’s AHP Policies and Practices, to obtain a subsidy in an amount approved by the FHLB-NY (the “Subsidy”) for use in the Project.

D. The Application and the AHP Direct Subsidy Commitment dated _____ (“Commitment”) that the FHLB-NY issued to the Member in connection with the Project are incorporated herein by these references.

E. In accordance with the AHP Regulation, the Sponsor is a private, not-for-profit corporation, government entity, or for-profit organization that is integrally involved in the Project, as defined by the FHLB-NY in its Implementation Plan, such as by exercising control over the planning, development, or management of the Project, acting as a rehabilitation specialist, or by qualifying borrowers and providing or arranging financing for the owners of the Project units or dwellings.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the FHLB-NY, the Member and the 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 Regulation 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 on the approval date set forth in the Commitment that the FHLB-NY issued to the Member in connection with the Project.

5. Compliance. The Member and the Sponsor, each, agree to comply with the AHP Regulation, the FHLB-NY’s AHP Policies and Practices, and the commitments made in the Application.

6. Approval of Application. Approval of the Application by the FHLB-NY shall be conditional and shall be subject to the AHP Regulation and the FHLB-NY’s AHP Policies and Practices. Approval shall be effective only upon written notice from the FHLB-NY to the Member.

7. Operational Feasibility and Need for the Subsidy. In accordance with § 1291.5 (b)(2)(iii) of the AHP Regulation, the Project must be operationally feasible, as specified in the FHLB-NY’s Implementation Plan and the FHLB-NY’s AHP Policies and Practices. Furthermore, the requested Subsidy must be necessary for the financial feasibility of the Project, as currently structured. 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 FHLB-NY reserves the right to reevaluate the level of AHP subsidy on an on-going basis throughout the development of the Project. The FHLB-NY, in its sole discretion, will only fund that portion of the Subsidy deemed necessary by the FHLB-NY to maintain the Project’s operational and financial feasibility. During such reevaluation, the FHLB-NY will principally 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) An estimate of the market value of in-kind donations and volunteer professional labor and services but not the value of “sweat equity,” if applicable;
- c) 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

- d) Prior to the time of the actual disbursement of the Subsidy, the FHLB-NY shall determine whether the Project is operationally feasible, in accordance with the FHLB-NY's Implementation Plan and the FHLB-NY's AHP Policies and Practices, including but not limited to, applicable financial ratios, geographic location, needs of the Project owner-occupant 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 FHLB-NY at the time the Project is ready to receive all or part of the Subsidy, as the case may be. The Member and/or the Sponsor, as applicable, shall complete such forms and provide such information as are required by the FHLB-NY in order to disburse the Subsidy, as set forth in the FHLB-NY's funding and monitoring procedures and guidelines and the FHLB-NY's Policies and Practices.

(i) When the disbursement of the Subsidy is needed, the FHLB-NY will require the Member to furnish specific information and documentation substantiating the use of the Subsidy. Please refer to the FHLB-NY's website regarding the appropriate forms and relevant supporting documentation that must be furnished to the FHLB-NY at the time that a draw down of the Subsidy is requested.

(ii) Funding requests shall be processed in accordance with the AHP Regulation and the FHLB-NY's AHP Policies and Practices. The FHLB-NY shall have the right, in its sole discretion, to withhold or deny disbursement of the Subsidy if, based on the information available to the FHLB-NY at the time of the Member's request for funding the FHLB-NY is not satisfied as to:

- (a) the Member's creditworthiness and compliance with the requirements of the AHP Regulation, the FHLB-NY's AHP Policies and Practices, the Application, the FHLB-NY's Credit Program policies and the Advances and Security Agreement by and between the Member and the FHLB-NY; and
- (b) the Sponsor's compliance with the requirements of the AHP Regulation, the FHLB-NY's AHP Policies and Practices, and the Application. Upon receipt of the Member's request for funding, the FHLB-NY reevaluates the amount of the Subsidy in accordance with ¶ 7, above.

(iii) In addition, the amount of the Subsidy funded by the FHLB-NY 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 FHLB-NY'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 FHLB-NY determines, based on the FHLB-NY'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 ¶ 16, below, shall apply where an adjustment is made by the FHLB-NY to decrease the amount of the Subsidy already disbursed by the FHLB-NY for the Project.

(iv) In the event that the Member requests a disbursement of all or part of the Subsidy from the FHLB-NY in order to directly provide the Sponsor with AHP assistance during the construction and/or

rehabilitation phase of the Project units, prior to their sale to income-eligible owner-occupants, the Member hereby:

- (a) reserves the right to have in place a separate, legally enforceable agreement with the Sponsor whereby the Sponsor agrees to use the Subsidy in accordance with the terms of the Application, the requirements of the AHP Regulation, and the FHLB-NY's AHP Policies and Practices; and
- (b) agrees to ensure that the Subsidy directly benefits each household which has been approved either by the Member or the Sponsor to purchase and occupy a Project unit;
- (c) agrees to monitor and track the disbursement of the Subsidy from Sponsor to each household which has been approved either by the Member or the Sponsor to purchase and occupy a Project unit; and
- (d) agrees to prepare any subsequent documents or agreements which formally release the Sponsor from complying with the requirements of the AHP Regulation, the FHLB-NY's AHP Policies and Practices, and the Application and then assign such responsibilities to each household which has been approved either by the Member or the Sponsor to purchase and occupy a Project unit.

9. Timing of Subsidy. The Member and the Sponsor acknowledge the timeframes set forth in the Implementation Plan, the Application, and the FHLB-NY's AHP Policies and Practices for the full disbursement of the Subsidy.

- (a) The FHLB-NY reserves the right to cancel up to the entire amount of the Subsidy committed to the Member on behalf of the Project if the Member or the Sponsor fails to satisfy such timeframe requirements, subject to the FHLB-NY'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 ¶ 16, below, shall apply with respect to any amount of the Subsidy already disbursed by the FHLB-NY for the Project.
- (b) If the Project involves the construction or rehabilitation of affordable dwellings for sale to income-eligible households and the Sponsor has failed to either obtain building permits or procure the necessary financing commitments by the first anniversary of the Commitment, the FHLB-NY reserves the right to unconditionally cancel the Commitment, consistent with the requirements of the AHP Regulation and the FHLB-NY's AHP Policies and Practices.
- (c) If the Subsidy was approved to provide income-eligible households with purchase downpayments, interest rate reductions, and/or closing cost assistance, and the Member or Sponsor has not requested a disbursement of all or part of the Subsidy by the second anniversary date of the Commitment, the FHLB-NY reserves the right to unconditionally cancel the Commitment, in whole or in part, consistent with the requirements of the AHP Regulation and the FHLB-NY's AHP Policies and Practices.
- (d) Consistent with the requirements of the AHP Regulation and the FHLB-NY's AHP Policies and Practices, the FHLB-NY reserves the right to unconditionally cancel the Commitment, if, for any reason, all or part of the Subsidy remains undisbursed by the third anniversary date of the Commitment.

10. Subsidy Pass Through. The Member shall pass on to the Sponsor the full amount of the Subsidy funded to the Member by the FHLB-NY. In turn, the Sponsor shall pass on to the AHP-assisted Project household the full amount of the Subsidy funded to the Sponsor by the Member.

11. Use of Subsidy. The Member and the Sponsor shall use the Subsidy only as set forth in the Application, consistent with the requirements of the AHP Regulation and the FHLB-NY's AHP Policies and Practices.

12. Modification. Neither the Member nor the Sponsor shall, without the prior written approval of the FHLB-NY, sell, transfer, modify, or change the Project in any way that will impact the original scoring or feasibility elements of the Project as specified and approved in the described in the Application (based on the FHLB-NY'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 Sponsor proposes to modify the Project in any way set forth in the immediately preceding sentence, the Member shall submit to the FHLB-NY 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 FHLB-NY to evaluate the proposed modification in accordance with the AHP Regulation.

13. Monitoring. The Member and the Sponsor each agree to perform their respective monitoring, notice and certification requirements set forth in the AHP Regulation. The Member and the Sponsor each further agree to perform such other monitoring as may be required by the FHLB-NY's AHP Policies and Practices, or as may otherwise be required by the FHLB-NY in its sole discretion.

(i) 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 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 Regulation. In turn, the Member must coordinate this documentation and provide the FHLB-NY with a semi-annual report (or as otherwise directed by the FHLB-NY) which certifies the status of the development of the Project.

(ii) Household income shall be defined as total annualized reportable income as specified in the FHLB-NY's policy guidelines. Depending on the median income standard that the Sponsor selected in the Application, 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 appropriate state housing agency mortgage revenue bond ("MRB") guidelines, the United States Department of Agriculture ("USDA"), or the Federal Financial Institutions Examination Council ("FFIEC"). The incomes of the residents of the Project must conform to median income data, adjusted for family size, for the Project's statistical area, as defined by either HUD, MRB, the USDA, or FFIEC

(iii) Within fourteen months of the transfer of title of all Project units to income-eligible owner-occupants, the Member must review supporting documentation prepared by the Sponsor and certify to the FHLB-NY:

- (a) that the AHP subsidies have been properly used as specified and as approved at the time of application to the AHP;
- (b) that the AHP owner-occupied Project units are subject to the enclosed standardized AHP Repayment Mortgage and Repayment Mortgage Note retention agreements;
- (c) that the Project has achieved its approved levels of performance, as specified at the time of application to the AHP, or subsequently modified with the consent of the FHLB-NY;
- (d) such certification is executed by a duly authorized representative of the Member and approved by one of the Member's managing officers; and

- iii) In cases where the Sponsor is constructing or rehabilitating Project units for subsequent resale to income-eligible owner-occupants, the FHLB-NY reserves the right to require the Member and the Sponsor to perform an on-site inspection of the exterior, and if possible, the interior living areas of the completed Project units.

14. Access to Information. Each of the Member and the Sponsor expressly authorizes the FHLB-NY and the 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 Sponsor agree to fully cooperate in and with the FHLB-NY's review of the Project, and to promptly provide to the FHLB-NY all documents and information reasonably requested by the FHLB-NY. The 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 five (5) years from closing on an AHP-assisted unit that is part of the Project.

(b) Subject to the provisions of ¶ 33, below, the Member shall ensure, and the Sponsor agrees, that each AHP-assisted unit which is part of the Project, shall be subject to a deed restriction or other legally enforceable retention agreement or instrument consistent with the AHP Regulation, and requiring, at a minimum, that (i) the FHLB-NY or its designee be given 30 days written notice of a sale, refinancing, foreclosure or transfer in lieu of foreclosure of any AHP-assisted unit within the Project occurring prior to the end of the Retention Period; and (ii) in the case of sale of any AHP-assisted unit within the Project prior to the end of the Retention Period, an amount equal to a pro rata share of the Subsidy, reduced for every month the seller owned the AHP-assisted Project unit, be repaid to the FHLB-NY from any net gain realized upon the sale, after deduction for sales expenses, unless the AHP-assisted Project unit is purchased by a very low-, low- or moderate-income household, as such term is defined at § 1291.1 of the AHP Regulation, and the Project unit continues to be subject to a deed restriction or instrument as herein described; and (iii) in the case of a refinancing of any AHP-assisted unit within the Project, an amount equal to a pro rata share of the Subsidy, reduced for every year the occupying household owned the AHP-assisted Project unit, be repaid to the FHLB-NY unless the AHP-assisted Project unit continues to be subject to a deed restriction or retention agreement or instrument as herein described.

(c) (i) (A) In the case of a sale or refinancing of an owner-occupied Project prior to the end of the Retention Period, unless, for the duration of the Retention Period, the Project unit 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 an owner-occupied project unit is sold to a household whose income exceeds 80 percent of the area median, adjusted for family size, 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 Sponsor or Project owner-occupant household(s) as a result of the Sponsor's or Project owner-occupant household(s)'s actions or omissions,
- (II) the Repayment and Recovery Provisions set forth in ¶ 16(a)(ii), below, shall apply, and
- (III) the portion of the Subsidy to be repaid, with interest as specified in ¶ 16(a)(ii), below, shall be the full amount of the Subsidy,

provided, however, that if any such sale or refinancing of the owner-occupied Project unit, 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 ¶ 16(a)(i), below, shall apply and the portion of the Subsidy to be repaid, with interest as specified in ¶ 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 Sponsor, the Project goes into foreclosure prior to the end of the Project's Retention Period, neither the Sponsor nor the Member shall be personally liable for repayment of the Subsidy, but the Member shall be required to commence "reasonable collection efforts," as defined in the last sentence of ¶ 16(a)(ii), below.

(B) In accordance with § 1291.9(a)(7)(iv) of the AHP Regulation, the obligation to repay the Subsidy to the FHLB-NY shall terminate after any foreclosure action.

(d) The Member, or the Sponsor if so designated by Member, shall notify the FHLB-NY in writing of a sale, refinancing, foreclosure or transfer in lieu of foreclosure of an AHP-assisted Project unit at least thirty (30) days prior to the anticipated happening of such an event.

(e) The Member and the 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 ¶ 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 FHLB-NY 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 FHLB-NY, plus interest as may be required by the FHLB-NY consistent with the FHLB-NY's AHP Policies and Practices, 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 Regulation, unless such noncompliance is cured by the Member within a reasonable period of time, as determined by the FHLB-NY, or the circumstances of such noncompliance are eliminated through an approved modification of the Application, in accordance with the applicable provisions of the AHP Regulation and ¶ 12 hereof.
- ii. Noncompliance by Sponsor The Member shall recover from the Project and repay to the FHLB-NY that portion of the Subsidy, plus interest as may be required by the FHLB-NY consistent with the FHLB-NY's AHP Policies and Practices, that as a result of the Sponsor's actions or omissions, is not used in compliance with the terms of the Application or the requirements of the AHP Regulation, unless such noncompliance is cured by the Sponsor within a reasonable period of time, as determined by the FHLB-NY, or the circumstances of such noncompliance are eliminated through an approved modification of the Application in accordance with the applicable provisions of the AHP Regulation and ¶ 12 hereof. For purposes of this ¶ 16(a)(ii), where the obligation to repay the Subsidy arises solely as a result of the Sponsor's actions or omissions, the Member shall not be obligated to the FHLB-NY for the return of the amount of the Subsidy that cannot be recovered from the Sponsor through reasonable collection efforts by the Member. The Member agrees to report in writing to the FHLB-NY the reasonable collection efforts taken by the Member. The FHLB-NY, the Member, and the Sponsor hereby agree that foreclosure upon the Repayment Mortgage document (to be executed between the Member and each owner-occupant household) 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) *Sponsor's Obligations*

The Sponsor shall repay to the Member and the Member shall repay to the FHLB-NY that portion of the Subsidy, plus interest as required by the FHLB-NY consistent with the FHLB-NY's AHP Policies and Practices, that as a result of the Sponsor's actions or omissions, is not used in compliance with the terms of the Application or the requirements of the AHP Regulation, unless such noncompliance is cured by the Sponsor within a reasonable period of time, as determined by the FHLB-NY, or the circumstances of such noncompliance are eliminated through an approved modification of the Application in accordance with the applicable provisions of the AHP Regulation and ¶ 12 hereof.

(c) *Repayment Obligations*

The repayment obligations, if any, of the Member or the 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 Regulation and the FHLB-NY's AHP Policies and Practices 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 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 FHLB-NY 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 Regulation, the FHLB-NY's AHP Policies and Practices or this Agreement.

(d) *Notices*

The Member or the Sponsor, as the case may be, shall promptly give written notice to the FHLB-NY of an occurrence of noncompliance with the requirements of the AHP Regulation, the FHLB-NY's AHP Policies and Practices 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 Agency Compliance Determinations and Enforcement Proceedings

(a) The Member and the Sponsor acknowledge that the FHLB-NY and the FHLB-NY's AHP are subject to the regulatory, supervisory and examination authority of the Finance Agency. The Member and the 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 C.F.R. Part 903, the Finance Agency may determine at any time, based on its review of the FHLB-NY'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 Regulation, and that such noncompliance is the result of the Member's or the Sponsor's actions or omissions. If the Finance Agency makes such a determination, the FHLB-NY will notify the Member and the Sponsor in writing of the Finance Agency's determination and may require remedial action by the Member or the Sponsor, or both, in accordance with the terms of the AHP Regulation and this Agreement. The Member and the Sponsor agree that within thirty (30) calendar days after receipt of such notice, or within such other period of time as the FHLB-NY may approve, if the Member or the Sponsor have not otherwise made a request to the FHLB-NY under ¶ 17(c), below, the Member or the Sponsor, or both, as may be directed by the FHLB-NY pursuant to a supervisory determination of the Finance Agency, shall cure the noncompliance, eliminate the noncompliance through an approved modification of the Application in accordance with the applicable provisions of the AHP Regulation and ¶ 12, above, or repay the Subsidy to the FHLB-NY, in accordance with ¶ 16, above.

(b) Upon its own determination, following due notice to Member, or pursuant to an order issued by the Finance Agency, the FHLB-NY, following due notice to the Member, may suspend or debar the Member or the 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 Regulation, the FHLB-NY's AHP Policies and Practices, the Application or this Agreement.

(c) Subject to the conditions stated in this ¶ 17(c) and in the applicable AHP Regulation, the Member and the Sponsor consent to be parties in any enforcement proceeding initiated by the Finance Agency regarding repayment of the Subsidy, or regarding the suspension or debarment of the Member or the Sponsor, and agree to be bound by the Finance Agency'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 FHLB-NY prior to the 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 FHLB-NY member, subject to the formal consent of the FHLB-NY.

19. Lending of Subsidy. The Member acknowledges that the Subsidy shall be disbursed to the Sponsor as a conditional grant, in accordance with the FHLB-NY's Policies and Practices. In turn, the Sponsor shall also disburse the Subsidy to each qualified Project household as a conditional grant. In the event that the Member lends the Subsidy to either the Sponsor or Project household, any repayments of principal and payments of interest received by the Member shall be paid forthwith to the FHLB-NY.

20. Environmental Indemnity.

(a) *In General*

The Sponsor or Owner agrees to indemnify and hold the FHLB-NY 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 Sponsor takes ownership of the Project, whether before, during or after construction or rehabilitation by the 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 ¶ 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.

(b) *Properties Receiving Funds from the U.S. Department of Housing and Urban Development ("HUD")*

In the event that a Project will be receiving funds under any program sponsored by HUD, in which HUD will be performing the environmental review of the project pursuant to the provisions of NEPA and the CEQ regulations contained in 40 CFR Parts 1500 through 1508, as implemented by HUD at 24 CFR Part 50 including compliance with other applicable provisions and requirements of the Federal laws and authorities specified in 24 CFR Part 50, and the Sponsor or Owner will be required to comply with any environmental conditions required by HUD resulting therefrom, then the foregoing indemnity requirement is waived.

(c) *Effective Date.*

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

21. Sponsor's Representations and Warranties.

The Sponsor represents and warrants to the FHLB-NY as of the effective date hereof, on each funding date of the Subsidy, and as of the dates that the Sponsor provides monitoring information and certifications to the FHLB-NY as set forth in ¶ 13, above, and the AHP Regulation, the following:

(a) *Existence*

The Sponsor is a sponsor as such term is defined in § 1291.1 of the AHP Regulation, and is in good standing in the State or Commonwealth of its organization. The 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 and where the failure to so qualify would reasonably be expected to have a materially adverse affect on the business and operations of the Sponsor. The 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 Sponsor.

(b) *Power and Authority*

The execution, delivery and performance by the Sponsor of this Agreement and the Related Documents to which the Sponsor is a party are within the corporate or other powers of the Sponsor, has been duly authorized by all necessary action, does 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 Sponsor, or its property.

(c) *Enforceability*

This Agreement and the Related Documents to which the 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 Sponsor, enforceable against the 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 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 Sponsor is a party or by which it may be bound or affected.

(e) *Statements*

To the best knowledge of the Sponsor, after reasonable inquiry, the information given by the Sponsor in the Application and in other documents provided to the FHLB-NY and the Member, and in any oral statement made by the 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 § 1291.5 of the AHP Regulation. The Subsidy will be used only as set forth in the Application, and consistent with the requirements of the AHP Regulation and the FHLB-NY's AHP Policies and Practices.

22. Members' Representations and Warranties.

The Member represents and warrants to the FHLB-NY 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 FHLB-NY as set forth in ¶ 13, above, and the AHP Regulation, 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, does 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 FHLB-NY, 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 § 1291.5 of the AHP Regulation 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 Regulation and the FHLB-NY's AHP Policies and Practices.

23. Assignment. Neither the Member nor the 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 FHLB-NY, *provided, however*, that the Sponsor may assign its rights and obligations hereunder to a limited partnership of which the Sponsor or an entity wholly controlled by the Sponsor is a general partner without the FHLB-NY's prior written consent, if such limited partnership remains integrally involved in the Project and the assignment is in writing and is consistent with the terms of the Application and the requirements of the AHP Regulation. The Sponsor shall notify the FHLB-NY 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 FHLB-NY, the FHLB-NY may disburse subsidies to another member of the FHLB-NY to which the Member has transferred its obligations under the Application, or the FHLB-NY may

disburse subsidies through another Federal Home Loan Bank District to a member of that FHLB-NY 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 FHLB-NY, the Member, the Sponsor, or the owner-occupant household 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 held in the jurisdiction where the project is located.

(b) The Member and the Sponsor agree to pay all attorneys' fees and other costs incurred by the FHLB-NY in connection with any action or proceeding to enforce any right or remedy under this Agreement, except as otherwise provided for herein.

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 permitted successors and permitted assigns of the Member, the Sponsor, and the FHLB-NY.

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 delivery service shall be effective the day following delivery to said delivery service.

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 FHLB-NY's consent or approval is required hereunder, such consent or approval shall be consistent with the applicable requirements of the AHP Regulation and the FHLB-NY's AHP Policies and Practices, 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 FHLB-NY's rights and remedies under law, or prevent the FHLB-NY from taking any action pursuant to law in the event of the Member's or the 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 Regulation or the FHLB-NY's AHP Policies and Practices. Nothing in this Agreement shall be deemed in any way to limit the Member's rights and remedies under law, or prevent the Member from taking any action pursuant to law in the event of the 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 Regulation or the FHLB-NY's AHP Policies and Practices.

33. Entire Agreement.

(a) *In General*

Except as otherwise expressly provided in this ¶ 33 and in ¶ 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 FHLB-NY that relate to the Project.

(b) *Other Project Agreements*

To the extent that the Member and the Sponsor have entered into any agreements pertaining to the Project to which the FHLB-NY 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 page to follow]

PROJECT: # _____

PROJECT 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

Vice President
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 2/27/09