



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

This Affordable Housing Program Direct Subsidy Agreement and Memorandum of Understanding – Rental 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 section 10(j) of the Federal Home Loan Bank Act, as amended (12 U.S.C. § 1430), and the regulations promulgated by the Federal Housing Finance Agency (the “Finance Agency”) thereunder, codified at 12 CFR Part 1291, together with the policies and guidelines established by the Finance Agency in connection with the AHP (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 section 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 _____ in the amount of \$ _____ (“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 maintains an ownership interest (including any partnership interest) in the Project, as defined by the FHLB-NY in its Implementation Plan.

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 12 CFR § 1291.5(c), 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. 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 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 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 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 the Sponsor, as applicable, shall complete such forms and provide such information as is 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.

- (a) 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 to be funded. 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.
- (b) 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

- i) 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

- ii) 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 shall reevaluate the demonstrated need for the Subsidy in accordance with section 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 section 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.

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 Commitment shall initially expire six months from the Effective Date specified above in section 4. Thereafter, the Member and the Sponsor will have an opportunity to request an extension of the Commitment. The FHLB-NY may, in its sole discretion, approve an extension not to exceed six months, subject to receipt of evidence that the development of the Project is progressing in a reasonable and satisfactory manner.
- (b) The FHLB-NY reserves the right to cancel the Commitment and de-obligate up to the entire reservation of the Subsidy if the Member and the Sponsor fail 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 section 16, below, shall apply with respect to any amount of the Subsidy already disbursed by the FHLB-NY for the Project.
- (c) 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 all or part of the Subsidy remains undisbursed by the second anniversary date of the Commitment and the Sponsor has failed to either obtain building permits or procure all necessary financing commitments from the Project's other funding sources.

- (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 Project 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, and 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, 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 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 either the Member or the 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 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 long-term monitoring to be performed by each of the Member and the Sponsor shall be conducted pursuant to the applicable method for long-term monitoring set forth in the AHP Regulation, as approved by the FHLB-NY for the Project. 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.

- (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 Sponsor, the corporate entity that owns the Project site and improvements thereon ("Owner"), or an agent of the Sponsor is required to submit verifiable evidence to the Member that the Project is being developed in accordance with the terms and conditions of the 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.
- (b) Within fourteen months 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 Sponsor or owner and certify to the FHLB-NY that: i) the Project meets its income targeting commitments; ii) the rents charged for income-targeted units do not exceed the maximum levels specified and approved in the Application; and iii) the Project has satisfied its other approved levels of performance. Such certification must be acknowledged and executed by an officer duly authorized by the Member's Board of Directors or executive management.
- (c) In addition to the certification specified above in section 13(b), the FHLB-NY will require that the Sponsor (or an agent of the Sponsor) make available relevant supporting documentation, information, and other evidence (which were either not submitted or not available during the AHP subsidy funding process) in order to substantiate that the Project successfully attained those levels of performance that were set forth in the Application. In turn, the FHLB-NY will review all supporting documents and formally evaluate the Project's ability to comply with the AHP Regulation and meet the terms and conditions of the Application as approved (or, if applicable, subsequently modified).
- (d) The AHP Regulation requires the FHLB-NY to monitor rental projects for a period of fifteen (15) years. The Sponsor (or an agent of the Sponsor) must submit a formal certification to the FHLB-NY on an annual basis, beginning on the second anniversary date of Project completion (i.e., issuance of the final certificate of occupancy), that i) the tenants' rents and incomes are in compliance with the rent and income targeting commitments made in the Application; and ii) the Project continues to be operated as an affordable housing initiative.

(e) In addition to the annual certification specified above in section 13(d), the Sponsor (or an agent of the Sponsor) must provide a report to the FHLB-NY in accordance with the itemized schedule below. The report shall include a current rent roll (or some other acceptable summary of Project tenant names, household incomes, and corresponding rents), third-party income source documents for any new tenants, and confirmation that the rent structure remains affordable. In lieu of such documentation, the Sponsor (or an agent of the Sponsor) may submit a public agency audit report or a copy of a rental assistance contract as evidence that tenant rents and incomes remain in compliance with the targeting commitments which were originally set forth in the Application.

i. If the Project received \$100,000 or less in AHP subsidy, the Sponsor must provide the FHLB-NY with a supplemental monitoring report once every seven years;

ii. If the Project received between \$100,001 and \$299,999 in AHP subsidy, the Sponsor must provide the FHLB-NY with a supplemental monitoring report once every five years;

iii. If the Project received between \$300,000 and \$499,999 in AHP subsidy, the Sponsor must provide the FHLB-NY with a supplemental monitoring report once every four years;

iv. If the Project received \$500,000 or more in AHP subsidy, and the AHP assistance is equivalent to ten percent or less of the total development budget, the Sponsor must provide the FHLB-NY with a supplemental monitoring report once every three years.

v. If the Project received \$500,000 or more in AHP subsidy, and the AHP assistance is equivalent to ten percent or more of the total development budget, sponsors must submit long-term Monitoring Reports (including appropriate confirmation that the tenant incomes and rents remain in compliance with the approved targets) to the FHLB-NY once every two years. If the Project qualified for low income housing tax credits, the Sponsor may request the FHLB-NY to rely upon the long-term monitoring efforts of the housing agency who issued the tax credits.

(f) 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 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, the USDA, or FFIEC.

(g) As set forth in § 1291.1 of the AHP Regulation, Project rents must be set at affordable levels, in accordance with the following parameters:

i. The rent charged to a household for a unit that is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the Application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 persons per unit without a separate bedroom); or

ii. The rent charged to a household, for rental units subsidized with Section 8 assistance under 42 U.S.C. 1437f or subsidized under another assistance program where the rents are charged in the same way as under the Section 8 program, if the rent complied with this § 1291.1 of this part at the time of the household's initial occupancy and the household continues to be assisted through the Section 8 or another assistance program, respectively.

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) As stated above in section 13(d), the term “Retention Period” shall mean 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 FHLB-NY 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 above and section 33, below, the Member shall ensure, and the Sponsor agrees, that 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 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 FHLB-NY 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 FHLB-NY 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 FHLB-NY’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, then the full amount of the AHP subsidy received by the owner shall be repaid to the FHLB-NY, **provided, however**, that if any such sale or refinancing of the Project, as described in subparagraph (A) above, shall occur solely as a result of the actions or omissions of Member or Sponsor, then the provisions of section 16, below, shall apply and the portion of the Subsidy to be repaid, with interest as specified in section 16, 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 recover and repay to the FHLB-NY only that amount of the Subsidy that the Member can recover through Member’s “reasonable collection efforts” as defined in the last sentence of section 16(a)(ii), below.
- (B) If due to circumstances that are 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, then the respective Repayment and Recovery Provisions of section 16, below, shall apply, as appropriate.
- (d) The Sponsor shall notify the FHLB-NY 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 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 section 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 section 12, above.

ii. Noncompliance by Sponsor. The Member shall recover from the Sponsor 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 section 12, above. For purposes of this section 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 AHP subordinate mortgage agreement (to be executed between the Member and the 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) *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 applicable 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 section 12 hereof. In accordance with § 1291.9(a)(8)(iv) of the AHP Regulation, the income-eligibility and affordability restrictions applicable to the Project shall terminate after any foreclosure action.

(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 12 CFR Part 907, 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 section 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 section 12 hereof, or repay the Subsidy to the FHLB-NY, all in accordance with section 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 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 section 17(c) and in the 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 FHLB-NY'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 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 in the form of a conditional grant, in accordance with the FHLB-NY's AHP Policies and Practices. The AHP Regulation prohibits the Member from either lending the Subsidy to the Sponsor or collecting principal payments or accrued interest thereon. However, in the event that the 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 Sponsor shall be promptly repaid 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 section 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) *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 the National Environmental Policy Act (“NEPA”) and the Council on Environmental Quality (“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 section 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 section 13, above, and the AHP Regulation, the following:

(a) *Existence.*

The 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 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 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, 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 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 12 CFR § 1291.5 of the AHP Regulation. The Subsidy will be used only as set forth in the Application, consistent with the requirements of the AHP Regulation and the FHLB-NY's AHP Policies and Practices.

22. Member's 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 section 13, above, and in accordance with 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, 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 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 12 CFR § 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 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 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, or the 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 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.

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 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 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 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 at law or in equity, or prevent the FHLB-NY from taking any action at law or in equity 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 at law or in equity, or prevent the Member from taking

any action at law or in equity 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. Minorities and Women. As required by the Housing and Economic Recovery Act of 2008, during the performance of this Agreement, the Sponsor agrees that it shall practice the principles of equal employment opportunity and non-discrimination in all its business activities. The Sponsor shall include the provisions of the preceding sentence in any subcontract that it may enter for services or goods provided to the FHLB-NY.

34. Entire Agreement.

(a) *In General*

Except as otherwise expressly provided in this section 34 and in section 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 – 5th Floor, New York, NY 10178-0599
Attn: Community Investment Operations Department

By: _____

Joseph Gallo
(Print Name)

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