



**FEDERAL HOME LOAN BANK OF NEW YORK  
AFFORDABLE HOUSING PROGRAM**

**SECURITY AGREEMENT For Rental Projects With Section 811 or Section 202 Funding**

THIS SECURITY AGREEMENT IS A SUBORDINATE LIEN

THIS SECURITY AGREEMENT is made on \_\_\_\_\_ between \_\_\_\_\_ or its permitted assignee, (the "Owner"), and \_\_\_\_\_ (the "Lender"), a banking organization and a stockholder of the Federal Home Loan Bank of New York ("Bank"). The Lender is organized and exists under the laws of the State or Commonwealth of \_\_\_\_\_, and has its principal office at \_\_\_\_\_.

**PROMISSORY NOTE**

In consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), (hereafter referred to as the "AHP Subsidy") received by the Owner as a result of a subsidy which the Lender obtained through the Bank's Affordable Housing Program ("AHP") pursuant to Section 10(j) of the Federal Home Loan Bank Act, (12 USC § 1421 et seq.) and the regulations promulgated thereunder, as amended, in connection with the development of a certain parcel of real estate which is owned by the Owner (as described below), the Owner has signed a Promissory Note ("Note") of even date herewith. The Owner has promised to pay the amounts due under the Note and to abide by all promises contained in the Note.

**RIDER**

Attached to this Security Agreement is a Rider setting forth certain obligations and understandings between Owner, Lender and the United States Department of Housing and Urban Development. Such Rider is wholly incorporated into the terms of, and is made part of, this Security Agreement.

**SECURITY AGREEMENT AS COLLATERAL**

This Security Agreement is given to the Lender as collateral for the payment due and the performance of all promises under the Note, and secures the real estate owned by the Owner described as follows (referred to as the "Project"):

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

Street Address: \_\_\_\_\_  
Zip Code: \_\_\_\_\_ Section No.: \_\_\_\_\_ Block No.: \_\_\_\_\_ Lot No.: \_\_\_\_\_

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

Together with:

All buildings and other real improvements that now are or will be located on the site of the Project.

All fixtures, equipment and personal property that now are or will be attached to or used with the land, buildings and improvements of or on the site of the Project.

All rights which the Owner now has or will acquire with regard to the Project.

## **I. OWNER'S ACKNOWLEDGEMENTS**

The Owner acknowledges and understands that:

- a) The Project which is subject to this Security Agreement has been designated as housing which must be used by income-eligible households (as defined in the Note) for a period of fifteen (15) years from the date of the issuance of the Project's Certificate of Occupancy (the "Retention Period"); and
- b) To ensure that the Project is operated by the Owner in accordance with the provisions of the Bank's AHP during the Retention Period, the Note has been executed by the Owner and contains restrictions governing the use, transfer, sale, rental, and refinancing of the Project.

## **II. OWNER'S PROMISES**

In consideration for the benefits received as aforesaid, the Owner agrees as follows:

1. The Owner will comply with all of the terms of the Note and this Security Agreement which include:

During the Retention Period commencing as of the date of this Security Agreement, the Owner shall use the Project only as permitted by the Note and the federal regulations governing the Bank's operation of the AHP ("AHP Regulations"). In the event of breach of this promise (an "Event of Noncompliance"), the Owner hereby agrees to repay to Lender the AHP Subsidy or such sum as may be due pursuant to the Note together with such other sums as may be due under the Note.

2. The Owner warrants title to the Project and will defend its ownership against all claims.
3. The Owner shall pay all liens, taxes, assessments and other governmental charges made against the Project when due. The Owner will not claim any credit for any taxes paid on the Project against the AHP Subsidy and interest payable under the Note and this Security Agreement.
4. The Owner shall keep the Project in good repair, neither damaging nor abandoning it. The Owner will allow the Lender to inspect the Project upon reasonable notice.
5. The Owner shall use the Project in compliance with all laws, ordinances and other requirements of any governmental authority.
6. The Owner shall keep the Project insured against fire and other casualty in an amount acceptable to the Lender, naming the Lender as a loss payee thereon, as its interest may appear, and providing the Lender annually with a Certificate of Insurance evidencing such coverage.

### **III. AFFORDABLE HOUSING RESTRICTIONS**

The AHP Regulations, together with the Bank's procedures and restrictions governing the use, transfer, sale, rental, and refinancing of the Project have been established pursuant to the Lender's application to the Bank's AHP as well as the AHP Regulations.

Reference is made to the Note and the definitions of restrictions for the procedure in calculating the amount of AHP Subsidy to be paid to the Lender by the Owner upon an Event of Noncompliance or other default during the Retention Period, and for the determination of the restricted period of time.

### **IV. RIGHTS GIVEN TO LENDER**

The Owner, by pledging the Project to the Lender, gives to the Lender those rights stated in this Security Agreement, all rights by law given to creditors who hold liens and also all rights the law gives to the Lender and/or the Bank under the AHP. The rights given to the Lender and the restrictions upon the Project are covenants running with the land. The rights, terms and restrictions in this Security Agreement shall bind the Owner and all subsequent purchasers and owners of the Project, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and Security Agreement, the Lender will cancel this Security Agreement at its expense.

### **V. DEFAULT**

The Lender may declare the Owner in default on the Note and this Security Agreement if:

1. The Owner fails to comply with the provisions of the Note, the AHP Direct Subsidy Agreement and Memorandum of Understanding, or the federal regulations governing the administration of the AHP ("AHP Regulations");
2. The Owner fails to make any payment required by the Note and this Security Agreement;
3. The Owner fails to keep any other promises made in this Security Agreement;
4. The ownership of the Project is changed for any reason without compliance with the terms of the Note, the Security Agreement, the AHP Direct Subsidy Agreement and Memorandum of Understanding, or the AHP Regulations;
5. The Owner fails to comply with the terms of any other Note, the Security Agreement, the AHP Direct Subsidy Agreement and Memorandum of Understanding, or the AHP Regulations;
6. The holder of any lien on the Project commences a foreclosure proceeding or other legal action; or
7. Bankruptcy, insolvency or receivership proceedings are started by or against the Owner.

### **VI. LENDER'S RIGHTS UPON A DEFAULT OR EVENT OF NONCOMPLIANCE**

If the Lender declares that the Note and this Security Agreement are in default, all sums due and owing to the Lender shall be immediately due and payable. The Lender shall have, subject to the rights of prior liens,

all rights given by law or set forth in this Security Agreement, the AHP Direct Subsidy Agreement and Memorandum of Understanding, and the AHP Regulations.

## **VII. NOTICES**

All notices must be in writing and personally delivered or sent by certified mail, return receipt requested, to the addresses given in this Security Agreement. Address changes may be made upon written notice to the other party.

## **VIII. NO WAIVER BY LENDER**

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

## **IX. EACH PERSON LIABLE**

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

## **X. SUBORDINATE LIEN**

The lien of this Security Agreement is subordinate to and subject only to the terms and provisions of any first mortgage loan or prior liens executed contemporaneously herewith or any subsequent refinancing of said prior first mortgage loan by the Owner.

In accordance with the provisions set forth in the Note, the Owner agrees to provide the Lender with written notice of any sale or refinancing of the Project which occurs prior to the end of the Retention Period. In the case of a refinancing of the Project prior to the end of the Retention Period, whereby the Owner elects to "take out" equity, the Owner agrees to repay the Lender an amount equal to one hundred percent of the AHP Subsidy, in accordance with the provisions set forth in the Note.

## **XI. NO ORAL CHANGES**

This Security Agreement can only be changed by an agreement in writing signed by both the Owner and the Lender.

## **XII. SIGNATURES**

The Owner agrees to the terms of this Security Agreement by signing the following page.

**XIII. ACKNOWLEDGEMENT**

Owner acknowledges receipt of a true copy of this Security Agreement at no charge.

IN WITNESS WHEREOF, the undersigned representative of the Owner executes this Security Agreement on the day and year first above written:

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

(Owner name)

\_\_\_\_\_

(Signed)

\_\_\_\_\_

(Printed name of authorized representative)

\_\_\_\_\_

(Title)

STATE/Commonwealth of \_\_\_\_\_:

ss.

COUNTY OF \_\_\_\_\_:

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

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

\_\_\_\_\_

Notary Public

Corporate Seal