



**RECAPTURE AGREEMENT FOR RENTAL PROJECTS  
USING LOW INCOME HOUSING TAX CREDITS (LIHTCs)**

**AFFORDABLE HOUSING PROGRAM  
RECAPTURE AGREEMENT**

**THIS AGREEMENT** is entered into on \_\_\_\_\_ day of \_\_\_\_\_, among \_\_\_\_\_ ("Lender"), and \_\_\_\_\_ a(n) \_\_\_\_\_ not-for-profit corporation ("Sponsor"), and \_\_\_\_\_ a(n) \_\_\_\_\_ limited partnership ("Owner").

**RECITALS:**

A. Pursuant to Section 721 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), the Federal Housing Finance Agency ("Agency") is required to cause each Federal Home Loan Bank District ("District") to establish an affordable housing program ("AHP") to assist stockholder lenders of each District to finance affordable housing for very low, low and moderate income households.

B. The Lender is a stockholder of the Federal Home Loan Bank of New York ("Bank") and submitted an application dated \_\_\_\_\_ (the "Application") for an AHP grant for the purchase, construction, or rehabilitation of property commonly known as \_\_\_\_\_ ("Property"). The Sponsor has formed a limited partnership for the purpose of acquiring, constructing, or rehabilitating the Property located at \_\_\_\_\_ to be rented to low and very low income persons. \_\_\_\_\_ has a participating interest in the Owner.

C. Pursuant to regulations (including, without limitation, those contained in 12 CFR Part 1291) promulgated by the Agency pursuant to FIRREA ("AHP Regulations"), the Lender is required to provide for the recapture of any subsidized advances or other subsidized assistance in connection with unused or improperly used AHP subsidies.

D. In connection with the AHP grant, the Bank entered into that certain AHP Direct Subsidy Agreement and Memorandum of Understanding – Rental Project ("MOU") dated \_\_\_\_\_ with the Lender and the Sponsor, pursuant to which the Lender agreed to be bound by AHP Regulations and perform certain monitoring functions with respect to the Grant (defined below).

E. The parties desire to set forth those circumstances under which the Lender shall be entitled to a recapture of subsidy funds from either the Sponsor or Owner in connection with its AHP grant to the Sponsor for the purchase, construction, or rehabilitation of the Property.

## AGREEMENTS

1. Subsidy Amount. The parties hereby acknowledge and agree that Lender has, on even date herewith, disbursed the proceeds of a direct subsidy ("Grant") to the Sponsor in the amount of \$ \_\_\_\_\_. The Sponsor has used the proceeds of the Grant to provide the Owner with either a loan or a capital contribution. The term during which the Owner must comply with the AHP provisions of FIRREA to qualify and maintain the Grant is 15 years from the date of project completion, at which time this Recapture Agreement shall terminate.

2. Affordability Requirements. Owner agrees, during the term of the Grant, to manage and operate the Property as rental housing for very low-, low-, and/or moderate- income households. For purposes of this Agreement, very low income households shall mean households whose annual income is 50% or less of area median income, low income households shall mean households whose annual income is between 51% and 65% of area median income, and moderate income households shall mean households whose annual income is between 65% and 80% of area median income, as determined from time to time by the U.S. Department of Housing and Urban Development ("HUD") or as further provided in federal regulations. Owner agrees to make \_\_\_\_\_ units affordable for and occupied by very low-income households, \_\_\_\_\_ units affordable for and occupied by low-income households, and \_\_\_\_\_ units affordable to and occupied by moderate-income households during the term of this Recapture Agreement.

3. Compliance Documentation. Owner shall provide to the Lender any information regarding the project and use of the AHP subsidy pursuant to the AHP Regulations as amended from time to time and as required by the Bank.

4. Compliance. The Sponsor and Owner shall at all times comply with all laws, rules and regulations (including, without limitation, AHP Regulations) and with the provisions contained in the Application and those provisions contained in the Subsidy Agreement as they relate to the construction, ownership, management and operation of the Property.

5. Breach of Affordability Requirements. In the event Owner or the Sponsor, at any time during the term of the Grant, defaults in its obligation to manage and operate the Property and provide compliance information as required pursuant to paragraph 3 above or otherwise fails to comply with the terms of this Agreement, and such default continues for a period of 60 days after notice to Owner from the Lender or such shorter period of time required to avoid a default by the Lender under the MOU, it shall be an Event of Default of this Agreement and Owner and the Sponsor shall immediately pay the Lender that portion of the Grant which may be recaptured from the Lender by the Bank.

6. Indemnification and Survival. The Sponsor and Owner hereby agree to fully and unconditionally indemnify, defend and hold harmless the Lender from and against any judgments, losses, recapture, liabilities, damages (including consequential damages), costs, expenses of whatsoever kind or nature, including, without limitation, attorney's fees, expert witness fees, and any other professional fees and litigation expenses or other

obligations incurred by the Lender that may arise in any manner out of actions or omissions which result from Owner or the Sponsor's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties, obligations and indemnification of Owner and the Sponsor shall survive the term of this Agreement.

7. Joint and Several. The obligations of Owner and the Sponsor hereunder are joint and several.

Executed and delivered as of the date first above written.

*Name of Lender*

*Name of Sponsor*

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

Its: \_\_\_\_\_  
(Title)

Its: \_\_\_\_\_  
(Title)

*Name of Limited Owner*

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Its: General Partner