



First Home ClubSM
Declaration of Restrictive Covenant

FOR USE WITH FHA LOANS ONLY

FHLBNY requires the following documents be executed at the closing of a FHC household when FHLB funds are used in conjunction with FHA-insured loans. The FHC Declaration of Restrictive Covenant replaces the FHC Subordinate Mortgage.

- **First Home Club Declaration of Restrictive Covenant**
- **First Home Club Certification of Intent to Record**

These documents are in form fillable pdf format, which allows the completion of only the applicable information.



Federal Home Loan Bank
NEW YORK

DECLARATION OF RESTRICTIVE COVENANT

**REMOVE THIS NOTICE AND THE INSTRUCTION PAGE BEFORE
EXECUTING AND RECORDING THIS DOCUMENT**

FIRST HOME CLUBSM PARTICIPATING MEMBER INSTITUTIONS ARE REQUIRED TO COMPLETE THE ATTACHED DOCUMENT TO SATISFY THE LEGAL REQUIREMENTS OF THE JURISDICTION IN WHICH THE AHP-ASSISTED UNIT IS LOCATED.

THE FEDERAL HOME LOAN BANK OF NEW YORK STRONGLY SUGGESTS THAT THE MEMBERS CONSULT LEGAL COUNSEL TO ENSURE FULL COMPLIANCE WITH FHA-HUD REQUIREMENTS TO ENSURE COMPLIANCE WITH RECORDING REQUIREMENTS AND ALL OTHER APPLICABLE LAWS.

BY PROVIDING MEMBERS WITH THIS DOCUMENT, THE FEDERAL HOME LOAN BANK OF NEW YORK IS IN NO WAY PROVIDING LEGAL ADVICE OR MAKING ANY REPRESENTATION AS TO THE EFFECTIVENESS OF THE DOCUMENT NOR AS TO THE EFFICACY OF THE DOCUMENT IN RELATION TO FHA-INSURED MORTGAGE LOANS.

NO MODIFICATIONS TO THE SUBSTANTIVE PROVISIONS OF THESE DOCUMENTS ARE PERMITTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE FEDERAL HOME LOAN BANK OF NEW YORK.

INSTRUCTIONS

- 1. Complete “Certification of Intention to Record Declaration of Restrictive Covenant”**
- 2. Top of First Page: Fill in Member Name, Address, and name of person to whom document should be directed.**
- 3. Fill in Introductory Paragraph.**
- 4. Fill in information required by first “Whereas” clause.**
- 5. Fill in Dollar amount in fifth “Whereas” clause.**
- 6. Fill in addresses for Notice purposes in sections 4(a) & 4(b).**
- 7. Type in Declarant(s)’ Name(s) under the signature lines.**
- 8. Complete Notary Acknowledgement.**
- 9. Attach Legal Description of the premises.**

NMLS ID #: _____
NMLS NAME: _____

FIRST HOME CLUBsm
DECLARATION OF RESTRICTIVE COVENANT
CERTIFICATION OF INTENTION TO RECORD

MEMBER: _____

DECLARANT: _____ **FHC #** _____

PREMISES: _____

Title Number: _____

Title Company: _____

Attached is a copy of a Declaration of Restrictive Covenant that encumbers the above-referenced premises.

The original of this Declaration of Restrictive Covenant is being taken from the closing for public recording on _____.
Date

Name of Title Company, Law Firm or
Federal Home Loan Bank of New York Stockholder

Signature of Authorized Representative

Printed Name

Date: _____

After Recording, Return to:

DECLARATION OF RESTRICTIVE COVENANT

FEDERAL HOME LOAN BANK AFFORDABLE HOUSING PROGRAM

THIS DECLARATION OF RESTRICTIVE COVENANT (“Declaration”) is made as of the ___ day of _____ 20__ by _____, residing at _____, _____, _____ (the “**Declarant**”), in favor of _____, a _____ organized and existing under the laws of _____ with offices located at _____, _____, _____ (the “**Member**”).

WITNESSETH

WHEREAS, Declarant is the fee owner of certain real property located in the County of _____, City of _____ and State/Commonwealth of _____, which property is designated as Block ____, Lot ____ on the Tax Map for such County and is also known by the street address of _____, _____, _____ all as more particularly described in Exhibit A attached hereto (such real property together with all improvements now or hereafter erected thereon, being hereinafter referred to as the “**Premises**”); and

WHEREAS, Declarant is a First-Time Homebuyer who is purchasing the Premises; and

WHEREAS, Declarant has participated in the First Home Clubsm (the “**Program**”) sponsored by the Federal Home Loan Bank of New York and Member whereby the Federal Home Loan Bank of New York provides, through its Members, a grant for down payment and closing cost assistance to an eligible first-time homebuyer purchasing a home (“**Subsidy Amount**”); and

WHEREAS, Declarant has requested that the Federal Home Loan Bank of New York through the Member provide the matching funds for the purchase of the Premises; and

WHEREAS, the Federal Home Loan Bank of New York has allocated the amount of _____ Dollars (\$_____) to provide the Subsidy Amount for the purchase of the Premises to be distributed by the Member pursuant to the terms and conditions of this Declaration; and

WHEREAS, as a condition precedent to the disbursement of the Subsidy Amount for the purchase of the premises, pursuant to the Agreement, and as a condition of the United States Department of Housing and Urban Development's ("HUD"), the Declarant has agreed to execute, deliver and perform its obligations under this Declaration.

NOW, THEREFORE, Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises does hereby declare and agree that the Premises shall be hereinafter held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations and agreements set forth in this Declaration which shall run with the Premises and shall be binding upon Declarant and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises for a period of five (5) years from the date of the initial transfer of the deed to the Declarant. The Premises must remain affordable for a period of 5 years (the "**Recapture Period**") in accordance with Federal Housing Finance Agency regulations, as amended from time to time. In the event that the premises and/or the Declarant fail to be in compliance with Federal Housing Finance Agency regulations, the Federal Home Loan Bank of New York may request, through the Member, the return of all or a portion of the Subsidy Amount awarded. **Upon the conclusion of said five (5) year period, this Declaration of Restrictive Covenant shall be void and of no further force and effect.**

1. COVENANT. For the term of the Recapture Period, Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises, agrees as follows:

a. The Premises shall be used only for Households who meet the definition of a First-Time Homebuyer based upon the HUD definition.

b. A First Time Homebuyer must be a resident in the district of the Federal Home Loan Bank of New York at time of enrollment in the First Home Club which includes New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands.

c. At the time of enrollment into the program, the First Time Homebuyer must have an income of 80% or less of the area median income for their current place of residence, adjusted for household size, as defined by the Federal Home Loan Bank of New York and agreed upon by the Member in the Enrollment Period Report.

d. Each First Time Homebuyer household member executing the Promissory Note must complete, within the period of the agreed upon dedicated savings program, a homebuyer counseling program meeting the First Home Club Program Guidelines; qualify for and obtain mortgage financing exclusively through the Member for the purchase of a primary residence within the district of the Federal Home Loan Bank of New York (i.e., New York, New Jersey, Puerto Rico or the U.S. Virgin Islands).

e. The Declarant agrees that the Subsidy Amount will only be used for the purpose approved under the Program, i.e., down payment and closing costs for the purchase of a home by the Declarant. The Declarant acknowledges that if either the Member or the Federal Home Loan Bank of New York determines by its own monitoring or is informed that the Program funds will not be or are no longer being used for the purposes approved by the Federal Home Loan Bank of

New York (“Event of Noncompliance”), a *pro rata* portion of the Subsidy Amount must be repaid.

f. The Declarant agrees to repay to the Member, which in turn, shall repay to the Federal Home Loan Bank of New York, a *pro rata* portion of the Subsidy Amount (“Recapture Obligation”), if the Subsidy Amount is not used for the purposes approved under the Program or if the property does not remain affordable during the Recapture Period. If the property is sold to an ineligible homebuyer (i.e., homebuyers whose total household income exceeds 80% of the area median income, in which the property is located, adjusted for family size, as defined under the Program and agreed upon by the Member in the Enrollment Period Report on Date of Enrollment,) the Member is entitled to recapture a *pro rata* portion of the Subsidy Amount from the Declarant. Recapture of the Subsidy Funds will occur if the house is sold to an ineligible homebuyer within the Recapture Period, but 1/60th of the Subsidy Amount will be forgiven for each month of the term of the mortgage for which Declarant is in compliance. The Subsidy Amount may be assumed by an eligible homebuyer, as defined and limited to a household with an income that does not exceed 80% of the area median income in which the property is located, adjusted for family size, as defined under the Program.

g. If an Event of Noncompliance occurs, the Member, on behalf of the Federal Home Loan Bank of New York, shall recapture a *pro rata* portion of the Subsidy Amount by taking the following actions:

i) The Member shall request that the Declarant promptly reimburse the Member for such amount.

ii) In the event the Declarant fails to repay, the Member shall commence foreclosure proceedings against its lien on the home purchased by the Declarant. Any payments realized from the foreclosure proceedings shall satisfy the Declarant’s obligation. The Declarant agrees to pay all costs, any attorneys’ fees in the event the Member must refer this matter to an attorney for collection and/or for foreclosure of the mortgage.

iii) The Declarant agrees to keep the property fully insured against loss by fire, hazard, flood and the insurance policy shall include a standard mortgage clause in favor of Member.

h. Terms of Refinancing. In the case of a refinancing, including the granting of a home equity loan mortgage, prior to the end of the Recapture Period, an amount equal to the *pro rata* share of the Subsidy Amount that financed the purchase of the property, shall be recaptured by the Member on behalf of the Federal Home Loan Bank of New York, reduced for every year the occupying household has owned the unit, unless the property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism pursuant to the Program regulations.

i. Effect of Foreclosure during Recapture Period: The income-eligibility and affordability restrictions applicable to the Premises terminate after any foreclosure, conveyance by deed in lieu of foreclosure or any assignment of the first mortgage to the Secretary of HUD. However, any obligation to repay the Subsidy Amount for any period on noncompliance arising prior to the foreclosure, deed in lieu of foreclosure or assignment to the Secretary of HUD shall not be extinguished by such actions.

j. **Joint and Several Obligations:** If more than one person is the Declarant and owner of the Premises, such persons' obligations hereunder shall be joint and several, and references in this Agreement to "Declarant" shall be deemed to refer to each such person.

k. **Receipt of Additional Subsidy Amount:** The Subsidy Amount received by the Declarant for the assisted unit may not be in excess of \$20,000 from the competitive Affordable Housing Program and/or First Home Club Program offered by the Federal Home Loan Bank of New York.

2. REAL COVENANTS. Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises understands and agrees that the restrictions, covenants, obligations and agreements contained in this Declaration shall be real covenants running with the land and shall inure to the benefit of the Member and the Federal Home Loan Bank of New York and their successors and assigns, and bind Declarant and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises.

3. REMEDIES AND ENFORCEMENT. Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises understands, acknowledges and agrees as follows:

a. The Member and the Federal Home Loan Bank of New York are interested parties to this Declaration and Declarant consents to enforcement by the Member and the Federal Home Loan Bank of New York, administratively or at law or equity, of the restrictions, covenants, obligations and agreements contained herein.

b. No right or remedy conferred upon the Member and the Federal Home Loan Bank of New York in this Declaration is intended to be exclusive of any other right or remedy contained in this Declaration or at law or equity. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Declaration or now or hereafter available to the City at law, in equity, by statute or otherwise.

4. NOTICES. All notices and communications to the parties hereunder will be delivered by hand or sent by registered or certified mail, return receipt requested, or Express Mail or other nationally recognized overnight delivery service that provides a receipt to the sender. Receipt of a notice by the party to whom the notice is transmitted will be deemed to have occurred: (i) upon receipt, if hand delivered; (ii) upon receipt if sent by registered or certified mail or by Express Mail or other overnight delivery service that provides a receipt to the sender.

(a) All notices and correspondence to the Member must be delivered to the following address and addressee or to such other addresses or addressees of which the Member may notify Declarant, its successors, heirs, assigns, legal representatives, lessees or transferees including, without limitation, any owners and/or users of the Premises from time to time:

To Member:

(b) All notices and correspondence to Declarant its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises will be delivered to the following address(es) and addressee(s) or to such other address(es) or addressee(s) of which Declarant its successors, heirs, assigns, legal representatives, lessees or transferees including, without limitation, any owners and/or users of the Premises may notify the Member from time to time:

To Declarant:

Name(s): _____

Address: _____

5. EFFECTIVE DATE AND TERMINATION. This Declaration shall become effective upon execution by Declarant and shall terminate upon expiration of the five (5) year period from the date of the delivery of the deed to the Declarant except for rights and obligations that may have accrued prior to termination due to a breach of this Declaration of Restrictive Covenant.

6. MISCELLANEOUS.

a. **Governing Law.** This Declaration and its performance shall be governed by and construed in accordance with the laws of the State/Commonwealth where the Premises is located excluding said State's or Commonwealth's rules regarding conflict of laws and any rule requiring construction against the party drafting this Declaration.

b. **Amendments; Waiver.** This Declaration may not be amended except by an instrument in writing signed by the Member, the Federal Home Loan Bank of New York and the Declarant. The failure by the Member and the Federal Home Loan Bank of New York to exercise in any respect any right provided for herein will not be deemed a waiver of any rights hereunder.

c. **Severability; Invalidity of Certain Provisions.** The provisions of this Declaration are intended to be severable. If any term or provision of this Declaration or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Declaration, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

d. **Required Provisions of Law Controlling.** It is the intention and understanding of the parties hereto that each and every provision of law required to be inserted in this Declaration should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then this Declaration shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written and agrees for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises to be bound by this Declaration.

STATE/Commonwealth of _____)
)
County of _____)

SS.:

On the ____ of _____ the year 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signatures on the instrument, the individual(s), or the person(s) upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL ADDRESS OF PREMISES:

LEGAL DESCRIPTION OF PREMISES

(SEPARATE ATTACHMENT)